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YEAR BOOKS OF EDWARD II.

VOL. XVIII.

8 EDWARD II.

A.D. 1315

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FOR THE SELDEN SOCIETY

BY

WILLIAM CRADDOCK BOLLAND
OF LINCOLN'S INN AND THE NORTH-EASTERN CIRCUIT, BARRISTER-AT-LAW
LATE SCHOLAR OF MAGDALENE COLLEGE, CAMBRIDGE*He (Sergeant Maynard) had such a relish of the old year books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.*

ROGER NORIE

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.

ALBERT SOREL

1843

LONDON

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1920

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THE
PUBLICATIONS
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περὶ παντὸς τὴν ἐλευθερίαν

VOLUME XXXVII
FOR THE YEAR 1920

Selden Society

FOUNDED 1887

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The Dear Books Series.

VOL. XVIII.

PREFACE.

A PRELIMINARY note to explain the publication of Volume XVIII. of the Year Book Series out of its due order is in place here and has historical interest. The Plea Rolls necessary for the preparation of Volumes XVI. and XVII. were, for safety's sake, taken away from London at the time of the air raids and remained inaccessible until some weeks after the proclamation of the armistice. The Rolls of immediately later date were not removed from the Public Record Office. It was consequently possible to edit Volume XVIII., but not possible to edit Volumes XVI. and XVII. As all the Plea Rolls are now back in the Record Office there is no longer any hindrance to the preparation of the reserved volumes.

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LIST OF MANUSCRIPTS.



- B = British Museum, Additional MS. 35094
C = British Museum, Additional MS. 37658
D = Lincoln's Inn, Hale MS. 139
E = British Museum, Harleian MS. 2184
H = British Museum, Egerton MS. 2811
M = Cambridge University Library, Gg. 5, 20
T = British Museum, Harleian MS. 3639
X = Bodleian Library, Tauner MS. 13
Z = Lincoln's Inn, Hale MS. 137 (2)

YEAR BOOK SERIES.

VOL. XIII. (6 EDWARD II. A.D. 1312-1313)

EDITED BY

SIR PAUL VINOGRADOFF, F.B.A. AND LUDWIK EHRLICH, B.LITT.

CORRIGENDA

<i>Page</i>	<i>line</i>	<i>for</i>	<i>read</i>
First	last	1918	1917
2 <i>b</i>	1	non-suit	default, <i>i.e.</i> want of prosecution: and so in other places.
—	10	default on the next day,	default, on the next day.
8	3	suefit	suesit.
8 <i>b</i>	10	middle	legitimate.
—	—3	omit 'not'	
10 <i>b</i>	—9	<i>Inge</i>	INGE J.
10 <i>b</i>	19	omit 'not'	
18 <i>b</i>	21	baser expedient	lower plea.
19 <i>b</i>	14	omit 'not'	
25 <i>b</i>	11	one	him.
28 <i>b</i>	—10	demised	divested herself of.
35 <i>b</i>	—6, 7	gives you no estate, &c.	gives you no standing or power (see note on p. 28 <i>b</i>).
38 <i>a, b</i> (<i>pluries</i>)	—	from the said time	of (and so elsewhere).
42 <i>b</i>	—	add to note 3: Here the sense is 'believing.'	
44 <i>b</i>	9	himself and the other	both parties.
47 <i>a</i>	—9	p(ar)te	perte.
47 <i>b</i>	—9	burden (?)	loss.
50	3	Add note: Va . . . cat probably signifies the scribe's deletion of the words thus enclosed. The corresponding words in the translation may therefore be disregarded.	
61	—5	dereynera	dereynera.
61 <i>b</i>	—5	will derive from this the right to	will recover.

<i>Page</i>	<i>line</i>	<i>for</i>	<i>read</i>
74	10	The sense requires 'vous supposez' in the text and 'you' in the translation.	
74b	14	<i>Inge</i>	INGE J.
75a	—	delete note 1	
75b	2	spiritual matter	special cause.
77b	22		after 'was' insert 'said.'
78b	—1	. . .	for.
82b	13	has not come	does not sue.
91b	7	to be paid . . . to wit	one moiety thereof to be paid to the said William.
—	—3	manor	manner.
—	—2	selling	removing.
92b	—15	marl	a marl pit.
93b	6-7	and turf besides	and then turf underneath.
111b	18-20	payment . . . less	for the King's scutage of 40s. when it occurs [i.e. when 40s. is the amount levied on a knight's fee], 2s., and if more or less then in proportion. Cp. pp. 177, 187.
	of Note from the Record		
124	—5	undivided between	common to.
125b	—10	ewcs	geese.
126	—1	in silence	tacitly.
132a, b	9 of case 31	appanir	appendant, and in translation 'without saying appendant.'
133b	1	provost	reeve.
142	—1, 2	Let . . . writ	[Rendering doubtful, <i>qu.</i> , text corrupt.]
143b	—12, 8	ransom, ransomed	fine, fined (and so at pp. 143, 147).
144	3 of No. 11.	len	len (l'en, <i>illam inde</i>); delete footnote 2 on right hand page.
145b	—2 and notes	just . . . logically	so far as it follows.
		note 3	'Deyvent il': Anglo-French is still preserving the grammatical declension of the plural (<i>il</i> = <i>illi</i> , <i>ils</i> = <i>illos</i>).
147b	1, 2	(is . . . delivery)	signifies that I took them in the name of distress and will let them be delivered.

<i>Page</i>	<i>line</i>	<i>for</i>	<i>read</i>
149b	-5, 6	something . . . hundred	that the taking was outside the hundred.
155	5	abide judgment	demur.
—	8	plea	demurrer.
156	-5	<i>in solidis</i>	<i>in solidum</i> , and translate 'jointly and severally.'
156b	-4	the party chose him	the plaintiff (claimed) the <i>elegit</i> .
157b	2, 3 of case 43	there were several tenants	he had several tenements.
158b	at foot	upon request of the parties without essoiners	'prece pareium' without essoin. 'Prece pareium is a highly technical term. See <i>Y.B.</i> 14-15 <i>Edw.</i> III, ed. Pike (Rolls ed.), p. 186.
159b	-3	all over	fully, and delete note 7.
161b	note 2	delete and read 'See Littleton, §514.'	
163b	2	connivance	consent.
166	-14	we should vouch	you should vouch us. (Delete note 2.)
167b	10 <i>sqq.</i>	Add note: 'This is an interesting early example of detinue being thought to lie against a finder. See Holdsworth, <i>Hist. Eng. Law</i> , iii. 274-7.'	
172b and <i>passim</i> in case 49	-4	escheated	which fell in.
		Add note: <i>Eschoir</i> and derived forms have not here the technical English meaning of <i>escheat</i> : as in modern French the sense is simply 'fall due.'	
179b	-17	(appurtenances)	approvements.
181	6, and note 5	read in text 'nous serrons tost a un' and translate 'we shall soon be agreed.'	
187b	-13	for the food of the said Prior.	the Prior finding their food.
208b	13, 25	tendered	attained an.
227	4	free tenement	freehold.
229b	16	freehold because	freehold, and because.
235a	-3	par le decouenaunt	par le couenaunt.
235b	-4, 3	except by way of counter-covenant made thereof	but speaks of a covenant made hereof.
—	—	Delete footnote 6	

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INTRODUCTION.

THE TABLE OF THE MATTERS.

1. Of Jury Service in Edward II.'s Time and some Related Matters.
2. Of Egerton MS. 2811.
3. Of Hengham C.J.K.B.
4. Of some Cases reported in this Volume.

1. OF JURY SERVICE IN EDWARD II.'S TIME AND SOME RELATED MATTERS.

THIS seems a convenient place to discuss the jury system as we see it actually working in the Court of Common Pleas in the reign of Edward II. Without making any attempt to write the history of trial by jury, I shall confine myself to the facts, so far as they can be certainly stated or plausibly suggested, of the practice as we find it, and its necessary consequences, at the time when the cases reported in this series of volumes were heard; and as we find the jury system working in Edward II.'s time, so it had been working, without any discoverable difference in the law or custom relating thereto, from well back in the previous reign. As will presently appear, service on a jury at Westminster was for all jurors an onerous one. For many it was a service to be escaped at any reasonable cost; for some, the old and infirm, it was a service to be escaped at any possible cost. Who should be summoned and who should not be summoned was for the Sheriff of the county to say, or for the bailiff of a franchise having return of writs, and in this power of summoning and refraining from summoning an unscrupulous mediaeval Sheriff found a ready means of getting much money. He would summon two or three times as many as were at all likely to be wanted, hoping that the half or two-thirds of these would pay freely to be let off. He would summon the old, the ailing and the infirm, feeling sure that they, at any rate, would pay handsomely to be allowed to remain in quiet at home. This thing

must have become a notorious scandal and intolerable oppression in Edward I.'s reign, for the preamble of the Statute of Westminster II. cap. xxxviii (13 Edw. I.) runs: 'Forasmuch also as Sheriffs, Hundreders and Bailiffs of Liberties have used to grieve those that be in subjection unto them, putting in assizes and juries men diseased and decrepit and having continual or sudden disease, and men also that dwelled not in the county at the time of the summons, and summon also an unreasonable multitude of jurors for to extort money from some of them for letting them go in peace, and so the assizes and juries pass many times by poor men and the rich men abide at home by reason of their bribes.' And so it is ordained that 'from henceforth in one assize no more shall be summoned than four and twenty; and old men above threescore and ten years being continually sick or being diseased at the time of the summons, or not dwelling in that county, shall not be put in juries; nor shall any be put in assizes or juries, though they ought to be taken in their own shire, that hold a tenement of less than the value of twenty shillings yearly. And if such assizes and juries be taken out of the shire none shall pass in them but such as hold a tenement of not less than the value of forty shillings yearly at the least.' But, apparently, this did not stay the evil, for some eight years later further legislation was found to be necessary. 'Forasmuch,' says the first Statute of 21 Edward I., 'as our Lord the King by the continual and grievous complaint of his middle-class people doth perceive that divers persons being of least ability of his realm are many times intolerably troubled by Sheriffs and their Bailiffs, Bailiffs of Liberties, which impanel them to the recognisances of assizes, juries, inquests and attaints, triable out of the shires where they do be dwelling, and do spare the rich people and such as be more able, by whom the truth of the matter might be better known, whereby great expense and trouble do daily manifestly come to the impoverishment and utter disinheriting of many,' it is ordained that no one is to be summoned out of his own county unless he has land to the yearly value of a hundred shillings, and no one is to be summoned within the county unless he has land to the yearly value of forty shillings. But it was not enough to pass statutes which did not provide for the punishment of those who paid no heed to them. Another seven years went by and still Sheriffs were growing rich through extortion, and still the old and infirm were being summoned to perform duties which they were physically incompetent to perform, and were being made to pay the Sheriff whatever he thought he could get from them for their release. And then at last, by cap. ix of the *Articuli super cartas* (28 Edw. I.), it is provided that if a Sheriff summon anyone

to serve on a jury contrary to the form of the statute, and be convicted of having done so upon the complaint of the person so wrongly summoned, he shall pay to the complainant double his damages and also be grievously amerced unto the King. And writs were granted in the Chancery by which these damages could be obtained and the amercements to the King be enforced. But there were other illicit ways than through extortion of bribes from those who wanted to avoid service on a jury and thought it worth their while to do so by which the mediaeval Sheriff could and did gather in substantial sums of money. One does not, of course, expect to find much direct evidence in writing of bribery, but where strict accounts of his payments had to be kept by a bailiff we do now and again find some evidence of it, and we may plausibly infer, knowing what the general character of the Sheriffs of the time was, that there was a good deal more of which no proof has been preserved. In the accounts of the Bailiff of Merton College, Oxford, for 1344, for example, is noted a payment of twenty shillings to the Sheriff of Cambridge *pro bona panella habenda* in a plea between the Warden of the College and William de St. George¹; and in the accounts of the Knights Hospitallers in England for the year 1338 are several such entries as this: *in donis dandis vicecomiti clericis suis et aliis*.² But, indeed, it was not only the Sheriffs and the lesser ministers of the land who accepted payment for favour to be shown. The Justices of the King's Bench and of the Common Pleas appear to have been equally ready and willing to do so. Most of them seem to have been in the regular pay of the Knights Hospitallers, and we may therefore not unreasonably presume in that of other bodies and persons as well. It is certain that the Justices were receiving pensions and other emoluments from the Hospitallers, and it is hard to believe that they were paid and received quite innocently. Geoffrey the Scrope, Chief Justice of the King's Bench, had a lease for life of the camera of Huntingdon,³ of the value of ten marks yearly, *nihil inde reddendo*.³ He had a like lease of a house and three carucates of land at Penhall, together with the adjacent meadows and pastures.⁴ And, besides all this, he had a pension from the Knights Hospitallers of forty shillings a year as Chief Justice of the King's Bench *in qua curia omnia placita transgressionum et felonie et conspiracie placitantur*.⁵ These last words seem to constitute a fairly frank confession of the reason for which the pension was granted. Richard of Willoughby, a Justice of the

¹ *A History of Agriculture and Prices in England*, by J. E. Thorold Rogers, ii. 614.

² *Ibid.* p. 12.

³ *The Knights Hospitallers in England* (Camden Society), vol. 65, pp. 40, 58, 62, 88 etc.

⁴ *Ibid.* p. 134.

⁵ *Ibid.* p. 204.

same Court, had a pension of five marks. The whole of the Common Bench, *que est curia Regis de placitis terrarum et tenementorum secundum leges Anglie placitatis et terminatis*, were receiving pensions from the Knights.¹ Chief Justice Herle took forty pounds a year, Justice Shareshull took a hundred shillings, Justices Aldeburgh and Shardelowe forty shillings each. The Barons of the Exchequer were also all subsidized, and the minor officials of the several Courts also.² And it does not seem altogether unreasonable to suppose that the Justices were drawing other like pensions from other like sources. But, before thinking too hardly of them, we ought to take into consideration the financial difficulties into which they were driven by the King's neglect to see that they were paid the salaries to which they were entitled. A Chief Justice's salary in those days was sixty marks, or £40; a puisne Justice's salary was forty marks, or £26 13s. 4d. These salaries were payable in half-yearly instalments at Michaelmas and Easter. The *Liberate* rolls give us much information as to how actually they were paid. It was no uncommon thing for a Judge to have to wait three or four years for his salary, during which time he was left to get on as best he could. Take one or two actual instances. On January 25, 1315, the salary of Sir William Bereford, Chief Justice of the Common Pleas, was three and a half years in arrear. At the same time the salary of the Chief Justice of the King's Bench, Sir Roger Brabazon, was two years in arrear. A still more flagrant instance is that of Hervey of Stanton, one of the Justices of the Common Pleas, who, it may be noted, was appointed to preside over the Eyre of Kent held in 1313 and 1314—an office which would certainly entail much additional expenditure. On June 30, 1315, six and a half years' salary was due to him. He then succeeded in getting an order for the payment of four years' salary, still leaving that for the last two and a half years to continue in arrear. But it does not necessarily follow that, because a Justice got an order for the payment of the arrears of his salary, he actually received these arrears. This same Hervey of Stanton had been a Justice assigned to take assizes in the four years 1303-1306 at a salary of twenty marks a year. He had obtained an order for the payment of his salary for these four years from Edward I., but that order clearly was not honoured, for in 1315 Edward II. makes another order directing that these arrears of salary, ordered by his father to be paid, should be paid. Whether Hervey of Stanton got anything more by this second order than he did by the first, I do not know. The fact remains plain that the

¹ *The Knights Hospitallers in England* (Camden Society), vol. 65, p. 203.

King's Justices were left without any salary at all for year after year, and whether in the end they or their executors were ever able to recover the arrears owing to them remains very doubtful. And Judges, like other people, had to live. We need not, therefore, think too hardly of them because, driven by necessity, they allowed themselves to accept what seemed the only income on which they could certainly count.

Let us now, before going further, gather up the common-law and statutory qualifications of a juror summoned to determine an issue in the Common Bench at Westminster. He was to be a *probus homo*—that is to say, one who had not been discredited in law by attainder in conspiracy, attainr, *decies tantum* and the like. He was also to be a *legalis homo*—that is, one who was not outlawed, abjured or attainted of felony (Bracton, f. 185). He was to be unrelated either by blood or affinity to either of the parties to the action. He was to hold land of the value of five pounds a year at the least. To understand the position and duties of these mediaeval jurors, which in some respects were wholly at variance with the duties and obligations of modern jurors, we must bear in mind that they were not present at the hearing of the action the issue joined in which they were summoned to determine. It was not until the pleadings were finished and a direct issue had been joined between the parties that the Sheriff was ordered to have a jury of twelve at Westminster to determine it. Presumably that issue was clearly formulated and explained to them by the Sheriff or by some deputy of his, and they had in most cases to make up their minds before they went into Court what their verdict was going to be. They were men living in the immediate neighbourhood—in *visneto*—of the parties to the action or to the land, if it were a real action, which was in demand. And here a word or two may be interposed about this word *visnetum* or venue. I do not know that it was ever defined by any mediaeval authority, but it certainly carried a much narrower meaning in Edward II.'s time than that which it acquired in later years. It meant, in effect, a hundred or other district which is more than a household—what we may call a community. A jury of the venue meant, in fact, a jury of men living in such close contiguity to the parties to the action and to the land, or whatever else it might be that was the subject of the action, that they might reasonably be expected to have or easily be able to get a first-hand knowledge of the matters in issue—such, for example, as whether a man was born before or after the marriage of his parents, a matter very frequently in dispute, or whether a distress had been levied with or without the distrainer's fee, whether a deceased man had ever had such possession of land

as entitled his widow to dower, and so on. When the jurors were informed of the issue which they would have to determine, it was then their immediate duty to confirm and supplement, if necessary, their knowledge of the matter in dispute by full local inquiry. Seldom was any evidence laid before them when they got to Westminster, though now and then a fine was put before them. In almost every case their verdict had to be determined before they left home.

The jurors, we will suppose, have now made all the necessary inquiries and got what proofs they can of this or that essential matter, and have, in fact, their verdict in their pockets; and they have to get themselves to Westminster as soon as they can to deliver it to the Justices there. There will probably be some four-and-twenty of them. The Sheriff may not summon more than that number, but he has to see that a dozen good jurors are available at Westminster, and allowance must be made for those who may fall out by the way and for possible successful challenges by both parties in court; and the possible grounds for challenges were many in those days, and, considering the narrowness of the venue, were probably often successful. But all this is set out in the old authorities and need not be gone into here; and we have not yet got our jurors to Westminster. Let us suppose that the Sheriff of Northumberland is the summoning Sheriff and that the jurors have to be in Court on the octave of St. Hilary; and I choose this county and this winter term of St. Hilary not capriciously, but because I can say something more certainly about the journey from the north to the south of England in the winter in the early part of the fourteenth century than I could say of any other long journey at this or any other season of the year at that time. Obviously the first care of our jurors will be to make the necessary arrangements for their journey to London and back. No travelling expenses, so far as we can gather, were allowed them. One of the necessary qualifications of a juror called to serve outside his own county was the possession of land of an annual value of not less than five pounds; and the reason given for the necessity of this particular qualification is that he might be able to travel, which seems to show pretty clearly that a juror was his own paymaster. Money, then, was the first thing with which they had to provide themselves. The finance of the well-to-do man of the Middle Age presents difficulties which I have never seen discussed—difficulties which I myself am unable to discuss with any authority. The only coins current in England at this time were silver pennies. Large sums, running into several hundreds of pounds sterling, were not infrequently paid as purchase money for land. In Edward I.'s reign Ralph of Hengham

paid within three years fines amounting to more than £4300, William of Brompton paid over £3600, and other Justices paid other large fines. Whence did the purchasers of large estates—whence did the Justices amerced in such large sums, get the money they had to pay? Was it the custom of the mediaeval landowner—I am using the word loosely—and the mediaeval merchant to keep unremunerative sackfuls of silver pennies ready at hand in case they should want them? There were no banks, of course, though there was no lack of moneylenders, both professional and private, in spite of the laws against usury. Justice Roubery, we may fitly note here, one of the Justices of the King's Bench at the time with which in this volume we are immediately concerned, lent the Bishop of Durham¹ £200—that is, 48,000 silver pennies. What interest he charged or got is naturally not chronicled. A man who wanted a large sum of money for the purchase of land or for any other purpose must seemingly have had it in his own possession in the form of a rather unwieldy mass of silver pennies, or must have borrowed it from some one else who had it stored in the same unwieldy form. How much money would a man in Edward II.'s reign want who was going to journey from somewhere in Northumberland to London, stay in London maybe for a week or ten days, and then travel home again? If we want to understand what being a juror meant in the Middle Age, this is one of the questions we must presently try to answer.

But before considering details it will be convenient to say something generally as to the facilities for travel in the thirteenth and fourteenth centuries. Travelling at this time was in all likelihood easier and more comfortable than it was two or three hundred years later. In the first place, long journeys were frequently undertaken for religious ends. The *cultus* of the martyred St. Thomas of Canterbury was universal throughout England, and bands of pilgrims were for ever journeying from all parts of the land to Canterbury to make their devotions before his shrine, and then journeying home again. Somner tells us that in 1420, the one hundred and fiftieth anniversary of the consecration of the shrine, a hundred thousand people came together in Canterbury. The background of Chaucer's 'Canterbury Tales' is a religious pilgrimage. In the second place, all England, all Western Europe, was at this time of the same faith. Lawyers and ecclesiastics and others were constantly passing backwards and forwards between Rome and various places in England for the prosecution of appeals and the transaction of business, which was by no means always ecclesiastical business, at the Papal Curia. These habitual pilgrimages

¹ *Regist. Palat. Dunelmensis* (Rolls Series), i. 276.

and business journeys made safe roads and the easy obtaining of food and shelter absolutely necessary. They could not have been so generally undertaken as they were without them, and we might safely have inferred the existence of decent roads and accommodation for travellers from the certain fact of those frequent pilgrimages and business journeys even if we had no other evidence of them. The common law made the landowners of the neighbourhood responsible for the maintenance of the highroads, and we have strong reasons for believing that at this time they were much better than they were in the years after the Reformation, when, by the abandonment of religious pilgrimages and of business journeys to the Papal Curia, easy and safe communication ceased to be one of the necessities of English life.

But what has just been written, true though it be of the conditions prevailing in England during the Middle Age taken as a whole, must not be left without some modification when we are speaking of the particular time to which the present volume has relation. A student of the Year Books of Edward II. can hardly fail to be struck by the almost complete absence of any direct reference therein to the black and troubled days through which England was passing at the time when they were compiled. And yet the years immediately preceding and following that with which the present volume is concerned were perhaps the darkest in our history. The quarrels between the King and his Barons were at their hottest height. Civil war, with all its loosened train of outrage, was rioting throughout the country, trampling down all rule and order. The King's Peace and all it stood for in men's lives no longer existed. Nor was this all. Famine after famine in horrible succession swept over the land and intensified the sufferings caused by the civil nautinies, crippled the people's energies and benumbed their spirit. But no breath of all this seems to have disturbed the tranquil atmosphere of Westminster Hall, broken—when broken at all—only by the occasional noisy wrangling of the serjeants amongst themselves. Bearing in mind all that has been said, it seems a little wonderful that any jurors at all from the remoter counties were brave or, perhaps one should say, rash enough to set out at this time on the journey to Westminster. It seems not at all wonderful that so many that were summoned either never set out on that journey, or, setting out on it, never reached their goal. Over and over again it is recorded in the Plea Rolls of this time that this action or that was respited for lack of jurors—'for none came.' On one membrane alone of the Common Bench Roll for the Michaelmas Term of 8 Edward II. there are thirty-one such entries. Besides the entries in the roll which tell

us definitely that no jury came, so many records end with the order for a jury, with naught more following, that one is forced to believe that in many, if not in all, of these cases too no jury ever in fact came. The jurors had preferred to run the risk of the legal consequence of their neglect to obey the Sheriff's summons, which was, finally, the attachment of their lands, though it seems very doubtful whether this was in practice enforced.

Let us now go back to our jurors. They will have provided themselves with sufficient money for their journey, and as to the amount they would probably want I shall say something presently. They will meet somewhere in their own venue some ten or twelve days before they are due in London. The Sheriff may possibly be there to see that they really start, though as to this I can say nothing certainly, but he will not go with them. They will be riding their own horses, and it is not unlikely, as the journey is a long one, that each juror will bring with him a second horse, partly in relief of the first, and partly in view of possible mishaps by the way. There must, one thinks, necessarily be also sumpter horses, and, in all likelihood, men servants of some sort. We shall probably not be forming an exaggerated picture if we imagine a party of between thirty and forty men and about twice as many horses at least. And then they start on their long journey. We cannot follow them with any certainty of detail, for no narrative of more than the merest outline of such a journey at that time has come down to us, so far as I know. The mediaeval country tavern was probably nothing more than a drinking-booth, but hostels where a man might get a bed and probably accommodation for his horse were easily to be found. These hostels do not seem to have provided the traveller with much more than a bed, and his first business when he reached his quarters for the night probably was to sally forth in quest of provisions of all sorts, not forgetting candles. Farriers were in every village, and the cost of horse-shoeing was no negligible part of a traveller's bill. When he reached London, life was made much more easy and comfortable for him. Fitzherbert, who wrote in Henry I.'s reign, tells us of a public eating-house near the river where every day might be had, according to the season, viands of all kinds, roast, fried and boiled; fish large and small; coarser meat for the poor and more delicate for the rich, such as venison, fowls and small birds. However great are the numbers of soldiers or strangers, he says, who enter or leave the city at any hour of the day or night, they may turn in there and refresh themselves according to their inclination. Chaucer's witness to the wellbeing of the Tabard's guests is known of all.

We must now make some attempt to estimate what it cost a man in time and money to serve on a jury. A record of some facts and figures from which much relevant and interesting knowledge may be gleaned has happily been preserved to us. The Warden and one or more of the Fellows of Merton College, Oxford, had occasion to make several journeys between Oxford and Newcastle in the first half of the fourteenth century, of which fairly full details are still in existence for our learning.¹ On January 5, 1331, a party of at least seven persons—the Warden, two Fellows, and their servants—set out from Oxford to make the journey to Newcastle. They were ten days on their way thither, and the whole cost seems to have been £2 18s. 2d., which would be equivalent to about fifteen times that sum according to the value of money about the year 1900—that is, to £43 12s. 6d., or something over £6 a head, taking the party as a whole. The Fellows returned by themselves, each with his servant, and the cost appears to have been twenty-three shillings, or £17 5s. in modern money. The Warden returned later with four servants and three horses, and his costs were nineteen shillings and sevenpence farthing, or about fourteen guineas in modern money.¹ On the outward journey beds, presumably for the whole party, seem to have cost twopence a night; now and again the charge was only a penny. Beer, of which they appear to have drunk a goodly quantity, was a penny a gallon (*lagena*); ‘good beer’ was three halfpence. At Durham twopence was spent at the barber’s (*barbitonsor*), but the details of the bill are not given to us.

We can gather but little from the Year Books or the Plea Rolls of the jurors’ experiences in Court—that is, of such of them as ever got there. Now and again, but very seldom, we are told that some document or writing, a fine or a charter, was read to them as ‘evidence,’ and the presiding Justice charged them, but as a rule there seems to have been little opening for anything of the nature of a modern Judge’s charge. The issue was, speaking generally, a quite clearly cut one of fact, to be determined not by anything which the jurors heard in Court, but by their own previously and locally acquired knowledge of the parties and their family history and affairs. Probably the longest time they would have to stay in London would be the interval between one term day and the next one. And, apparently, whether the time was long or whether it was short, the jurors themselves had to defray the whole cost of their board and lodging. Enough, surely,

¹ These have been printed in part in *A History of Agriculture and Prices in England*, by Mr. J. E. Thorold Rogers,

to which I am indebted for the facts and figures given above (*op. cit.* ii. 635-641).

has been said to justify the statement with which we set out, that jury service in the Middle Age, and more especially in the time of Edward II., was a very onerous one.

2. OF EGERTON MS. 2811.

In the preparation of this volume I am able to use for the first time the British Museum manuscript catalogued as Egerton MS. 2811. I am calling it 'H.' It is a very valuable addition to our authorities for the years it covers, as the reports given by it are, for the most part, quite different from those given by our other manuscripts and are not collatable with them. The volume contains 365 vellum folios, and the date assigned to it in the British Museum catalogue is *temp.* Edward I. and Edward II. It is in an old binding of wooden boards covered with white goatskin. At the beginning, on folio 2b, are some tables of contents, with a colophon (on folio 8): *Finem hic capit Iohannis Collyis Alphabeticum etc.*; and this is dated October 14, 1518. On folio 1 is the name 'John Pake' (16th century?). It formerly belonged to Sir Gregory Osborne Page Turner (fourth baronet), and was bought at the sale of his books and MSS. in March 1827 by Sir Thomas Phillipps, Bart., and acquired by the British Museum at the Phillipps sale in 1898. The chief contents of the volume are:—(1) Crown cases at the Eyre of Kent in 6 and 7 Edward II., followed by other pleas. This section is imperfect at the beginning. (2) Pleas of the London Eyre of 14 Edward II. (3) A collection in twenty quires including a number of Year Books of Edward II., amongst which is another report of the Eyre of Kent in the sixth and seventh years of the reign. In addition, there are single pleas or small groups dated in various years of Edward II., and a few dated in 26, 32 and 34 Edward I. (4) The Eyre of Nottinghamshire of 3 Edward III. (5) The Eyre of Derbyshire of 3 Edward III. (6) The Eyre of Northamptonshire of 3 Edward III. (7) The Eyre of Bedfordshire of 4 Edward III. (8) Some undated pleas. Altogether a very valuable collection.

3. OF HENGHAM C.J.K.B.

It seems worth while saying something here of a statement made by Geoffrey Scrope, Chief Justice of the King's Bench, during the Eyre held at Northampton in 1329 and set out in the report of that Eyre included in the volume which we have just been describing. Coke and Foss and other writers dealing with the biography of Hengham C.J. cite the Year Book of the Michaelmas Term of 2 Richard II. as the earliest authority for the story that Hengham, taking pity on a poor man whom he had fined a mark, remitted half the fine and altered

the Roll of the Court accordingly,¹ and that for this irregular alteration of the roll he was fined eight hundred marks by the King. This report of the Eyre held at Northampton takes us more than a hundred and fifty years further back, to 1329, less than twenty years after Hengham's death. Scrope may very possibly have had a personal knowledge of the facts, and his statement of them is valuable and trustworthy evidence. He was asked to remit ten shillings of a fine of thirty shillings, 'and he said that he could not do this, for the fine had been entered on the roll; and he told how the King was angry with Sir Ralph of Hengham and put him on his trial on many charges, and did all that he could do, but could find no fault in him save that he had remitted half a mark of a fine, and had made an alteration in his rolls to that effect, and for this trespass the King fined him eight thousand marks.'² The whole story is a very puzzling one in view of the enormous fine

¹ 'Unus [Iusticiarius] fecit finem de octingentis marcis videlicet Ingham . . . et tantum fuit pro eo quod quidam pauper fecerit finem pro quodam debito ad 13s. 4d. et idem Iusticiarius fecerit rasari et pro pietate fecit inde 6s. 8d.'—*Y.B.B.*, Mich., 2 Richard II., p. 10 (A).

² It seems worth while giving in a footnote the whole text of the report of this case:—

'Treis hommes de Norhamptone furent endites qe par alliaunce de serment entre eux fet duissent auer entre la mesoun vn homme qe fut Corouner de la ville et ly auer debatu et desole et treti par les cheveux hors de sa mesoun et ly firent venir lendemayn ala gild halle et ly ousterunt de soun office de Coroner et ly firent fere serment qe mes ne serreyt en office de la ville sil ne fut par commandement le Roi etc. et demanda lour fut coment il lour fut aquite il prierunt qil poyent auer conseil et graunte lour fut de grace a ceo fere le queux enparlerunt et reuindrent et dissoient quant al alliaunce de serment de rien coupable et quant ala baterie de rien coupable et quant al ouster de son office il dissoient qe bref le Roi vint a viconte defere nouele Coroner et dissoient coment le viconte retourna al bailif de la ville et si qe par cesti bref pur ceo qil ne fut mye bon par diuers malueytes qe ly furent sourmys et pur ceo qil fut entendaunt a plusors offices issi qil ne purreit mye attendre a cel office si ly oustams saunz autre tort fere et quant al serment qil fist il le fit par

sa bone volunte par qei Lenqueste commaunde de fere venir encontre lendemayn a quel iour *Scrop* en le commencement del Eyre [dist] nous vous prymes de fere grace de ceo qe a nous appendoyt sauue nostre estat et en tiele volunte sumes nous vnqore par qei auisez vous si vous voyllez fere fyn qe vaut mieux de fere fyn qe defere vn douseyne estre periurs ou de attendre le peril de xij. Et il se ducerunt [*sic*] et dissoient quant alliaunce et batre de rien coupable et quant al ouster de sa baillie il voudrissent estre en la grace le Roy et prierunt as Iustices qe lour fesserent grace les queux demanderunt chescun de eux par ly ceo qil vodrissent doner lun tendy demi marche. *Scrop*. pur tiel trespas et meyndre Sir Henri prist fyn xl. li. et xl. marches et c. marches des gentz qe nauoyent x. li. de terre et demanda de ly x. li. et tendy xl. s. *Scrop*. vous ne paieretz mie meyns qe x. marches. Vn autre fit fyn pur xxx. s. le tierce par vn marche pur ceo qil furent pouers et puis Sire Robert de Arderne pria Sire Geffray qil volleytz perdoner le x. s. de les xxx. s. et il disoyt qil ne purreit ceo fere pur ceo qil fut entre en Roule et Counta coment le Roi fut coruee ou Sire Rauf de Engham et fit trier pleyntes sur ly et fit ceo qil pout fere et ne pout trouer autre defalte mes qil auoyt perdone vn demi marche de vn fyn et de ceo auoit fet raseuro en ces roules et pur ceo trespas le Roi prist de ly pur fyn viij^{md}. marches.'—Egerton MS. (British Museum) 2811, ff. 298b-299.

intdicted upon Hengham, for we know from other and indisputable sources, to which I shall refer presently, that Scrope was correct in putting this at eight thousand marks, and not as the later Year Book does at eight hundred. It is common knowledge that in 1289 Edward I. appointed a Special Commission to hear and determine the many charges which had been brought against his Justices. Nine charges against Hengham were entered for trial before this Commission. To go into the details of all these would be too long a task to be undertaken here.¹ It is sufficient to say that of five of them he was wholly acquitted. Two of the others were declared to be outside the scope of the Commission. Another was sent for trial before Thornton C.J., who had possession of the rolls containing the entry on which the complainant relied; and, so far as I can find, nothing further was done in the matter. In one case only, in which Hengham was charged jointly with Brompton and Saham JJ., was he found guilty. He denied every count of the indictment, and if he were in fact guilty of anything at all it does not seem to have been of anything more serious than an irregularity. Yet for this and 'for all other trespasses,' or transgressions, he was fined eight thousand marks.² There is no mention in any of the charges laid against him before the Commission of the substitution of half a mark for a mark in the record of which Scrope C.J. spoke. This was, perhaps, one of 'the other trespasses,' for which he was punished without the formality of a precedent conviction. Eight thousand marks was an enormous sum according to the value of money at the time. On all evidence available, there seems no sort of justification of such a fine. Chief Justice Scrope's words seem to imply a deliberate attempt on the part of the King to put Hengham in the wrong one way or another, and his failure to make out any real case against him beyond the fact that he had made this alteration in the record of the roll. Was Edward I. so desperately in need of money that he had no scruple as to how he got it? And failing, after all his attempts, to get Hengham convicted on any really grave charge, did he in an outburst of angry irritation inflict this preposterous fine upon him? Scrope's remarks seem to suggest that something of this kind happened. And the fact that Hengham was shortly afterwards restored to the Bench

¹ The student will find a full transcript of the record of several of these trials, and much other valuable information, in *State Trials of the Reign of Edward I.*, edited for the Royal Historical Society (Camden Series III. vol. ix.) by Professor T. F. Tout and Miss Hilda Johnstone, with an instructive introduc-

tion by the latter.

² 'Postea Radulfus de Hengham finem fecit cum domino Rege pro predicta transgressionibus et omnibus aliis transgressionibus prout patet per litteram domini Regis patentem quam penes se habet per viij^m marcas.'—*Op. cit.* p. 39.

seems more consistent with the theory of the King's temporary annoyance at his failure to secure a serious conviction against him than with any grave guilt on Hengham's part. Scrope, who must have had a fairly accurate knowledge of the facts, could not have spoken as he did if Hengham had been guilty of anything much more serious than an irregularity. The whole story remains a puzzle. Scrope's contribution to it, made at a time when all the facts were fairly fresh within men's memory, is valuable. It may be added here that two other charges against Hengham are noted in the Parliament Rolls,¹ for false judgment (jointly with Rochester J.) and false imprisonment, but I do not know what result they had.

4. OF SOME CASES REPORTED IN THIS VOLUME.

Grimbaud v. Huby (pp. 1-12 below). On July 23, 1313, being the Morrow of the Feast of St. Mary Magdalene, early in Edward II., John Huby brought an assize of novel disseisin at Boston in Lincolnshire against Robert Grimbaud, and complained that Robert had disseised him of the manor of North Witham. He had put into the jurors' view this manor and its appurtenances, including in the latter some hundred and forty acres of woodland which lay, not in North Witham, but in Twyford. No objection was raised at the time by the defending tenant to the inclusion of this woodland lying in Twyford in a view had under a writ to recover a freehold in North Witham. The assize passed in favour of John, who, by its verdict, recovered the manor of North Witham and its appurtenances; and, as the woodland in Twyford had been included in the view without any objection being taken by Roger, the Sheriff delivered seisin of this to John as of an appurtenance to the manor. Then Roger brought his assize at Grantham against John, complaining that John had disseised him of this very woodland in Twyford of which the Sheriff had delivered seisin to John in accordance with the earlier assize's verdict; and it is the proceedings before this later assize which are reported at considerable length in the present volume. John met Robert's prayer for the assize by saying that to grant it would be giving assize upon assize. This woodland, he contended, had already been the subject of an assize, and seisin of it had been delivered to him by the Sheriff on the finding of that assize, and Robert was, consequently, precluded from saying that he had disseised him of it. Robert argued in answer that woodland in Twyford could not be affected by any finding of an assize summoned to inquire of a freehold in North Witham.

¹ *Rot. Parl.* i. 48, 52.

Twyford, he said, was a quite different place from North Witham, and the writ gave no authority for any inquiry in respect of land lying there ; and he contended that the Court had no warrant to award seisin of it to John upon the finding of a jury which was going beyond its powers. John then protested that it was now too late for Robert to raise any such objection. The woodland had been put in the jurors' view as appurtenant to the manor of which John complained that he had been disseised. Robert had had the opportunity of raising any objection he chose. He had raised no objection, and he must be taken to have acquiesced in the form of John's complaint, and, by such acquiescence, to have admitted that this woodland must follow the manor if the assize found, as it did find, that John was entitled to have seisin delivered to him of the manor and its appurtenances. The point seemed to the Justices of Assize at Grantham too difficult a one for them to determine, and so they remitted it to the Justices of the Bench for their decision. Presumably it was discussed by them, but very little of any such discussion has been preserved for us by the reporters. BEREFORD C.J. did, indeed, rule that if a man bring an assize of novel disseisin to recover a manor in a certain vill to which other tenements lying in other vills are appendant, he ought to complain formally and specifically not only in respect of the manor generally, but also of such and such tenements in such and such vills individually ; and we gather that if it should be found that Twyford, where the woodland was, was a vill of itself and not a mere hamlet of North Witham, then the earlier assize had no right to deal with it, and the Justices of Assize had no authority to award the seisin of it to John upon the unwarranted finding of this assize. John, who was very unwilling to answer the question, was in the end forced by the Court to say whether Twyford was an independent vill or merely a hamlet. He said that it was only a hamlet, but that even if it were a vill, he had not disseised Robert. And so the further hearing and the determination of the assize were remitted to the Justices in the country. Presumably they were instructed to charge the assize there to say whether Twyford was a hamlet or a vill. If a vill, then the judgment of the Court in the former assize, awarding seisin of the woodland to John, was void as being *ultra vires*, and Robert was not barred thereby from bringing the present assize. If it were found to be merely a hamlet of North Witham, then the judgment was good and Robert was barred by it. So, at least, it would seem, but I assert nothing.

The point of interest in *Buckton v. The Bishop of Bath and Wells* (pp. 12-14 below) is that it notes another encroachment by the King's Court upon the jurisdiction of the Bishop's Court. The action was

brought by a writ of *quare impedit*. The question to be determined was whether a certain church in the Bishop's diocese became void before the plaintiff attained his full age and while, consequently, the right to present remained in the hands of the Bishop as guardian of the plaintiff's lands of inheritance, or after he had attained his age and had recovered seisin of his inheritance, including the right to present to the church. The plaintiff's contention was that the church became vacant, by reason of the parson's deprivation, after he had recovered his seisin. The Bishop, on the other hand, said that the church became void by the parson's resignation while the plaintiff was still under age and while he, the Bishop, was seised as guardian. According to all precedent, these seem to be questions for the Bishop to determine in his own court; but a reference of them to that court would obviously have made the Bishop the judge in his own cause. BEREFORD C.J. said that he should not inquire whether the church was legally void at as early a date as the Bishop said it was, or in what manner it actually became void, but merely whether it was void in fact at that time or not until later, as the plaintiff alleged; thus bringing the question at issue, as a mere matter of fact, within the competence of a jury of the venue to determine of their own local knowledge. And he ordered a jury to be summoned to determine it, to the astonishment of one of our reporters to whom it seemed clear that the question should have been referred to the Bishop. But if BEREFORD saw any way of retaining an action in the secular court he would not willingly let it go to the Bishop. He was a watchful guardian of the King's jurisdiction, and, seemingly, had but scant confidence in the ecclesiastical courts when they were dealing with what were really secular matters. 'The men of Holy Church have a wonderful way!' he once said; 'if they get a foot on a man's land they will have their whole body there.'¹

A fine was a very solemn document. It could not be contradicted, and no averment opposed to its tenor was allowed. Not even bad Latin could upset it,² as it could upset perhaps every other kind of document made between parties, and the fact of a fine being declared bad by the Court is worth noting. The reports of *Lestrangle v. Oakorcer* (pp. 15-17 below) tell us that certain manors had been granted by a fine to Joan Lestrangle. At the date of the fine a third part of these manors was held by one Constance as her dower. In the fine it was merely stated that this part was held by Constance for the term of her life, the truth but not the whole truth, for nothing was said about

¹ *Your Book Series*, iv. 69.

faux latyn.'—Hale MS. (Lincoln's Inn)

² '*Berr. Fyn ne fut vnqes faux pur* 139, f. 143b.

dower. The Court ruled that the fine had been improperly levied as the whole truth was not stated in it, and was consequently bad and ineffective so far as the land held by Constance in dower was concerned. As to the rest, the Court ordered a new fine to be executed, and told Joan that she might, if she liked, purchase to herself by some other grant the third part held by Constance in dower.

Vitals of Engaine, during the reign of Henry III., enfeoffed Alexander of Buckton of certain land in Essex to hold of him and his heirs by homage and a rent-service of two shillings and six pence a year. These were to be all the services due from the land. After the date of the Statute *Quia emptores* Alexander enfeoffed Andrew of Buckton of the same land, to hold it of the chief lords of the fee by the same services by which Alexander had held it. Andrew, at some later time, enfeoffed a predecessor of the plaintiff in the action of *The Prior of St. Mary's, Bishopsgate, v. Havering* (pp. 18-23 below) of the same land to hold it on similar terms. Then John, the son and heir of Vitalis of Engaine and chief lord of the fee, granted the services due from the land to Simon of Habenathe, grandfather of John, the infant son of Elizabeth, the defendant in the same action. John was Simon's heir. On the ground that the Prior had not done suit at John's court, Elizabeth, as her infant son's guardian, seized the Prior's cattle by way of distress. The Prior brought his writ of replevin. He was not bound, he pleaded, to do suit. Elizabeth could not charge him with services beyond those which John of Engaine, the chief lord of the fee, had granted to Alexander, the infant's grandfather, and suit was not included in those services. This seemed a very sound and convincing plea so far as merely documentary evidence went. But, said Elizabeth, Simon was in fact seised of this service of suit, and, moreover, was seised of it within the time limited for bringing an assize of novel disseisin, and John is Simon's heir. Even though Simon were seised of our suit—wrongly seised, as we contend—yet John, his son, father of the infant John, was not seised of it, and so there has been discontinuance of seisin, and you cannot rely upon Alexander's seisin, rightful or wrongful, against the evidence of John of Engaine's grant. 'I allow,' replied Elizabeth, 'that John, the father of the infant, was not actually seised of the Prior's suit, yet he claimed it, but he died before he had got his claim allowed by the Court.' On these pleadings the parties were adjourned. They were adjourned a second time without anything further having been done, and with the entry of this second adjournment the record ceases.

Kemston v. Ralph (pp. 24-33 below) was an assize of novel disseisin. Ralph, the defending tenant, was the infant son of John, who was dead,

and John was the elder son of Walter. William, the plaintiff, was the younger son of the same Walter. After the death of Walter, John seems to have allowed his younger brother William to occupy a messuage and thirty-three acres of land which formed part of his, John's, heritage, and William was in possession of this land at the time of John's death. John left an infant son, Ralph; and Ralph's guardian, acting in Ralph's name, ejected William, and got seisin of the land. William then brought his writ of novel disseisin. The objection was immediately taken that no assize ought in the circumstances to pass between the parties, for, as it was not disputed that Ralph was the heir of his father and of his grandfather, the presumption was that he was rightfully in seisin, and no claimant ought to be allowed to force him to defend and prove his title unless such claimant could show that he himself had some clear and definite title to the land. William made no attempt to show any such title. He confined himself to denying the continuous seisin from grandfather to father and son which Ralph asserted; and when he was definitely asked by the Justices whether he could either show any actual title in himself or impugn Ralph's title, he had nothing to say. And so the assize was refused by judgment, and William was amerced for his unfounded claim.

In *Furness v. Castle* (pp. 33-35 below) we have what may possibly be the story of the creation of a new manor. According to a charter produced by Sarah Furness, the plaintiff, Antony Bek, Bishop of Durham, granted her the manor of Rennesley. Before the date of this charter there does not appear to have been any such manor, which was, in fact, carved out of the existing manor of Plashes. In the first place it may be said that Clutterbuck in his *History of Hertfordshire* gives us a very full story of this manor of Plashes, in which he leaves no room for any lordship of it in the hands of Antony Bek either personally or as Bishop of Durham; and, unless there be some confusion of names in the record and reports, it is impossible to understand how Antony came to be dealing with it at all. But in any comments to be made here we must take the story as we have it in our report and in the record of the Plea Roll. Antony of Bek was Bishop of Durham from 1283 to 1311, and therefore Sarah's charter by which he granted the manor of Rennesley may very well have been of earlier date than the Statute of *Quia emptores* (1290). The generally received doctrine is that this statute made the creation of new manors impossible, though this is true only in a somewhat limited sense, for the statute did not prevent the division of already existing manors and the erection of the divided parcels into separate and independent manors. In the Trinity term of 26 Henry VIII. it was

ruled that if a manor descended to two or more parceners, and partition was made amongst them, so that each parcener had a parcel of the demesne and a parcel of the services, then each several parcener had a several manor.¹ Again, it was held in Bragg's case in Michaelmas term, 29 Elizabeth, that the tenant in dower of a third part of a manor has a manor and may hold courts and grant copyholds.² And WALMESLEY J. in Hilary term, 39 Elizabeth, said: 'If I grant away the moiety of my manor we shall both hold courts.'³ In face of the uncertainty as to the actual date of Sarah's charter, and the facts which gave Anthony of Bek any power at all to deal with the manor of Plashes, it is impossible to say whether he created a new manor or only divided an old one. And it must be remembered that in the Middle Age the Bishops of Durham were great princes and were clothed with so much of the King's *persona* within their own liberties that, in the absence of certain knowledge, one hesitates to say what they might do or might not do, but I have little doubt that their regalities included authority to create new manors.

Another case where the creation of a new manor in the limited sense stated above was possibly involved is *Cressy v. Gretton* (pp. 120-131 below). Here Thomas of Cressy and his wife held certain lands of William of Gretton by certain services, which included homage and a pair of white gloves yearly. Because these were in arrear, William, the defendant, levied distress, and thereupon the plaintiffs brought their writ of replevin. The liability to render the services was admitted, and the fact that they had not been rendered was also admitted. The real dispute between the parties was as to the nature of the tenancy. The plaintiffs said that they held a third part of the manor of Wandesley, that they had tendered the services as due from a third part of the manor, and that the defendant had refused to accept them. The defendant said that the plaintiffs did not hold a third part of the manor *eo nomine*, but a certain number of bovates of land, and that he had refused the tender of the services because they were tendered for a third part of the manor and not for so many bovates of land. This was a distinction which meant much. It seems admitted that if a tenant held his land as a fraction of a manor all the advantages and profits of lordship, such as wardship and marriage, appoivement, escheats and the like accrued to him in respect of the fraction of the manor held by him, and they were consequently lost to the original lord; while, if he held only

¹ 'Nota qe fuit agre en mesme le cas qe si un maner descendi a deux parceners ou plusieurs et ils sont particiones issint qe chescun deux ad parcel demaine et parcel des services chescun

deux ad un maner. Quod nota.'—*Y.B.B.*, Trin., 26 Henry VIII., p. 4, case 15.

² *Godbolt's Reports*, p. 135.

³ *Gouldsborough's Reports*, p. 117.

so much land by the name of acres or bovates or virgates, none of these sources of profit was his, but remained with the lord. But, further than this, if the plaintiffs in *Cressy v. Gretton* succeeded in establishing their contention, then, if the law were in 8 Edward II. what WALMESLEY J. declared it to be in 39 Elizabeth, they would have a manor of their own with the right of holding a court, always supposing that they had the essential two freeholders.

WALMESLEY J.'s ruling has been doubted, and this is not the place to discuss it. All the learning on the subject may be found by those who care to seek it in the very long footnote on pp. 17-22 of vol. i. (fourth edition) of the *Treatise on Copyholds*, by Mr. Charles Watkins, and I write no more here on the matter, taking to myself the caution conveyed in the last lines of that note: 'It is best . . . not heedlessly to provoke the discussion of so doubtful and unpopular a point where it can be avoided.'

Rye v. Tumby (pp. 36-51 below) was an action brought by Christian, widow of Ralph of Rye, against John of Tumby to recover her dower of certain lands in Lincolnshire. John of Tumby immediately vouched John, Ralph's son and heir, to warrant him; and when the latter John appeared in Court in obedience to the voucher, he asked to be shown for what reason he was bound to the warranty. John of Tumby then produced a charter made by Ralph on Christmas Day 1312 (6 Edward II.), by which Ralph granted to John of Tumby, absolutely and unconditionally, various lands in Lincolnshire, including those of which Christian was claiming dower, binding his heirs to warrant John of these lands against all men. John, the son of Ralph, admitted the deed to be his father's deed and that he was his father's heir; but, for all that, he said that he was not bound to warrant unconditionally. And this for two reasons. In the first place, although the grant of the lands to John of Tumby was an absolute and unconditional one, yet seisin of them had been delivered to him under certain conditions; and, further, on the same day on which the charter was made a supplementary agreement in writing was made between the same parties by which it was covenanted that if a sum of £220 which John of Tumby had lent to Ralph were repaid to John or his heirs or executors in the parish church of Boston at any time within the ten years next following, then all the lands granted by the charter were to go back to Ralph or his heirs; but, in case the £220 should not be so repaid within the time limited, then the lands were to remain to John of Tumby and his heirs for ever. John, the son of Ralph, said that seisin of the lands was delivered to John of Tumby after the form of this agreement, and that he was ready to warrant him after the same form; and, he argued

further, if he were to warrant unconditionally, he would, by so doing, acknowledge that John of Tumby had a fee simple in the lands, and so would preclude himself for ever from recovering them. He asked the Court to say whether, in consideration of these facts, John of Tumby could properly claim an unconditional warranty from him. John of Tumby, on the other hand, claimed that he was entitled to the Court's judgment. The charter was admitted, he argued, and nothing was pleaded in avoidance of it except a writing speaking of a condition which was never fulfilled. That very writing itself, moreover, tended, he said, to confirm his absolute estate, 'for the writing saith that this is an agreement etc. that one Randal of Rye enfeofed John of Humby, and so the writing proveth that he was enfeofed.' Then *Scrope* the Serjeant caught him and told him that, since he was pleading to the writing, he was *ipso facto* admitting it; and then he went on to protest that a charter is naught more than a little ink and parchment that cannot override the feoffor's will and intention as expressed at the time of the livery of seisin. The charter, he argued, was not seisin, but only evidence of seisin that might be rebutted by other evidence. Then, further, John of Tumby did not allege that the ten years mentioned in the writing had passed, and therefore he was precluded from saying that the condition contained in the writing had not been fulfilled. BEREFOED C.J. seemed doubtful whether, allowing the validity of the supplementary agreement, Ralph could recover his land merely by the payment of the money. It might, he thought, be necessary to have recourse to a writ of covenant. And then he took this obvious point: Why was not the condition made part of the original charter? — in which case I would never allow myself to be persuaded by any of my friends to make such a covenant void.' *Toudeby*, possibly prompted by the Chief Justice's expression of doubt, then asserted 'certainly, as good law,' that in any case the supplementary agreement would not entitle Ralph to recover the land on payment of the debt within the time limited but damages only. The land, he said, is John of Tumby's absolutely by virtue of the charter, which is admitted, and that fact is sufficient to bind Ralph to an absolute warranty. Pressed as to the supplementary agreement, he said that he relied upon the charter alone, and was not concerned either to admit or deny the conditioned agreement. 'If that be your attitude,' *Scrope* J. interpolated, 'the Court will take the agreement for granted.' Yet, allowing the agreement, if the fact remained, as according to the Chief Justice it probably did remain, that the repayment of the money under this agreement would not of itself entitle Ralph to recover the land, would not Ralph be bound to warrant absolutely, at any rate

until he had recovered the land by a writ of covenant? But to warrant absolutely would have been equivalent to depriving himself of any chance of ever recovering the land, for by warranting absolutely he would have acknowledged that the fee simple was in John of Tumby. A modern commentator is inclined to wonder why it was not proposed that Ralph should warrant, accompanying his warranty with a 'protestation' declaring the facts. If such a course could have been and had been allowed by the Court any future right of action would have been saved to him. Probably the obstacle to this course being taken was that at the moment Ralph had no right of action. Not unless the money were repaid within the time limited would one accrue to him; and quite possibly this was the reason why warranty under protestation was not open to him. The Court seems to have shown with some clearness what its opinion of the equity of the matter was, even though it was in some doubt about the strict law; and when, during an adjournment, Ralph repaid to John of Tumby the sum lent to his father, John appears to have delivered the land to him without further ado. Having given up the land, John seems to have considered that the action brought against him by Christian to recover her dower no longer concerned him, and he made default after default in appearance. Christian thereupon prayed that she might have seisin of the land in satisfaction of her claim to dower; but *Denham*, appearing for Ralph, asked that no judgment should be given on John of Tumby's default, for Christian, he said, had already been put in seisin of a third part of the tenements as her dower, and if she got judgment on John's default she would get another third part. Christian's counsel pressed for judgment on the default, denying that she had so far got aught, and protesting that Ralph was not entitled to be heard in the matter as he was no party to the action. In the end the Court ordered the land in respect of which dower was claimed to be taken into the King's hand, and directed that John of Tumby should be summoned to appear on the next term day to hear his judgment—a judgment which, if it were in fact ever delivered, has not been preserved for us.

In *Walsham v. Walsham* (pp. 52-71 below) Nicholas, the son and heir of John of Walsham, claimed by a writ of formedon from his mother, Alice, the manor of Walsham with some small exceptions. His case was that Roger of Walsham, his grandfather, had granted the manor in fee tail to John, Nicholas's father. The manor ought, therefore, to descend to him, Nicholas, on his father's death, as heir of the body of his father. Alice produced a fine levied in 21 Edward I. by which John, her husband and father of the plaintiff, granted the manor to Roger and Roger's wife, Isabel, for the term of their two lives, with

reversion, on the death of the survivor of them, to John and his heirs in fee simple. Against this Nicholas produced a charter made 'a long time before the date of the levying of the aforesaid fine.' On the margin of the Plea Roll, in line with the mention of this charter, is written the date: '22nd day of March in the sixth year.' We may plausibly suppose, then, that the charter which Nicholas produced was made in 6 Edward I., some fifteen years before the levying of the fine. These are the documents on which the parties respectively relied. The case is not an easy one to understand, and the confusion of the Christian names of the parties concerned in the reports, which vary amongst themselves and from the Plea Roll, helps to make it still more difficult. Alice did not say by what title she claimed to hold the manor. There was no plea that she held it as the guardian or next of kin of her infant son; and the only way to understand the case seems to suppose that Roger and Isabel, or the survivor of them, had granted her an estate for the life of the survivor of them and that she was retaining possession after her term had expired, or that she had simply usurped possession upon her husband's death, the true heir being an infant; but neither theory is without its difficulties. Alice's first point in answer to the writ was that Nicholas, the plaintiff, was an infant under age, and was therefore not competent to plead in the right, and she asked that the hearing should be delayed till his full age. She took the further point that she was relying upon a fine which was a matter of record, and no averment that was opposed to it was receivable. After a long technical discussion, the first point appears to have been decided against Alice, and the case went on. By the charter John had an estate in fee tail, but by the fine he purported to grant an estate in fee simple to himself and his heirs. Was he not purporting to do something that he had no power to do, and could even the solemnity of a fine cure this radical defect? But even supposing that the fine were held to be good, how would this fact help Alice? Nicholas would be tenant in fee simple in virtue of it, and Alice would have no right to the manor. After further arguments and adjournments Alice's counsel apparently dropped the fine and pleaded simply that Roger did not grant the manor to John in the form in which Nicholas said that he had granted it. Probably they did so after considering a story the Chief Justice told them of a certain ruling by Sir Ralph of Hengham in somewhat like circumstances: 'A man purchased certain tenements to himself and his heirs. The feoffor came into Court and a fine was levied under a writ of warranty of charter, and he acknowledged the tenements named in the writ to be the right of John as those which John and Alice had of his grant, to hold to

John and Alice and to the heirs of John of the chief lords of the fee. After the death of her husband the wife entered upon the tenements and maintained possession until the son came and ejected her. She said that she was seised and disseised. The son said that he had not disseised her. She tendered the fine. The assize passed, and it was found that the grant was made to John and his heirs, and John afterwards desired that his wife should have an estate for the term of her life, but the fine which was levied under the writ of warranty showed that there had been a grant precedent to the husband and his heirs without mentioning the wife, and the wife took naught by her writ by the ruling of Sir Ralph of Hengham' (pp. 68-9 below). The issue left looks very like an issue of law properly to be decided by the Court rather than by a jury, yet a jury was ordered to come to determine it, but there is no record of its finding or, indeed, that it ever came to Westminster at all.

Burgage tenure was the custom of Colchester, and tenements held by burgage tenure were devisable by will. Gilbert of Colchester, the plaintiff in *Colchester v. The Abbot of Colchester* (pp. 71-77 below), relying upon the seisin of his grandfather at the time of his grandfather's death which descended to himself through his mother, daughter and heir of his grandfather, claimed from the Abbot of Colchester certain tenements lying, not in Colchester itself, but in the suburb of Colchester. The tenements claimed by Gilbert had probably been devised by his grandfather to the Abbot, for the Abbot's first defence was that those tenements, like the tenements actually within Colchester itself, were subject to the custom of burgage and were, therefore, devisable. Then, further, it was established law that no possessory writ ran in respect of tenements subject to the custom of burgage, and Gilbert was suing by a writ of ael, which was a possessory writ; and the Abbot asked the Court to say that the writ was, consequently, bad. It was contended on behalf of Gilbert that though burgage tenure might be the custom of Colchester, the tenements claimed were not in Colchester itself; and it was further argued that even if they were in Colchester they would not come within the custom because they were in the possession of an Abbot, and an Abbot was not able to devise by will, and the tenements, therefore, could not be said to be devisable. On the other side it was argued, without any show of proof, that the suburb must be subject to the same custom as the town itself, and, with more force, that the fact of the tenements being at the time in the possession of one who could not devise them did not divest them of their theoretical capability of being devised. Then *Toudeby*, appearing for Gilbert, made the decisive reply. He first defined burgage

tenure. Tenements held by burgage, he said, were properly tenements that were held of the King in chief by a rent certain in a vill where burgage was customary. The tenements claimed by Gilbert were not within the vill and were not held of the King, but of John of Liston of the honour of Peverel.¹ The important fact was that they were not held of the King in chief. The Chief Justice, however, was not quite satisfied. If, he said, these tenements were tallaged equally with the tenements in the vill when the tenements in the vill were tallaged, that fact, he thought, would be sufficient to bring them within the custom. Apparently they had not been so tallaged and *Toudeby's* argument prevailed, and the writ was held good. The Abbot had then to plead to the facts, and he pleaded that Gilbert's grandfather did not die seised, and issue was joined on that plea. A jury was ordered, and the record tells us no more.

The only material facts on which the parties to *Newmarket v. Holbeach* (pp. 77-84 below) seem to have been in agreement were that one William Gobald died seised of certain tenements in Yorkshire, that he died without heir of his body, and that his two sisters, Laura and Margaret, consequently succeeded to the family inheritance. The action was brought by Laura and her second husband, Thomas, against Lawrence, who had married the other sister, Margaret, now deceased, leaving a son by this same Lawrence. The plaintiffs' allegation was that the defendant had acquired possession of the land claimed by them, which was part of the land of which William Gobald died seised, only by a devise made to him thereof by David of Flitwick, Laura's first husband, whom, in his lifetime, Laura could not oppose. Lawrence's defence was that the land claimed was his wife's share of the family heritage, and that, as she had died after having given birth to a son, he, Lawrence, was rightly in possession as tenant by the curtesy. The land, he said, was the heritage of his son and the right in it was his son's, and without his son he could not bring the land into judgment, and he prayed to be allowed aid of him. The plaintiffs objected that if they agreed to Lawrence having aid of his son, they would be accepting his theory that the land was his wife's, and to accept that theory was tantamount to acknowledging that their writ, which asserted that the land was Laura's, was bad. Besides, they urged in further objection to the prayer for aid, it may be that Lawrence's son is an infant, and, if so, he cannot plead in the right until he is of full age, and therefore to grant the prayer for aid would mean that the action must be stayed in the meantime, with the consequence that one who had no right to the land would be keeping the plaintiffs out of their

¹ The reports vary somewhat in their attribution of the Lordship.

right. It is not easy to understand the ground of the Chief Justice's ruling that Lawrence could not have aid of his son. 'They tell you,' the Chief Justice said, 'that these tenements were allotted to Laura as her share, and that they were alienated to you by her husband, and you, therefore, are not entitled to have aid in respect of what you had by her husband. And he was refused aid.' But this was to give full credence to the plaintiffs' *ex parte* allegation, and to refuse it to the defendant's. In noting the Chief Justice's ruling, one of our reporters adds *set quære*. He, too, it would seem, found it difficult to understand. The issue finally left for a jury was whether the land in demand had been assigned to Laura's share and, if so, whether she had had seisin of it until it was demised by David, her former husband, to Lawrence. There is no record that a jury ever came to determine this issue. The general impression to be gathered from reading the reports of the case is that no definite division of their brother's land was ever made between the two sisters, that they and their husbands entered upon the whole of the land jointly, and that Lawrence somehow, perhaps through Laura's first husband's negligent acquiescence, or perhaps only after his death and through his widow's ignorance of affairs, obtained control and possession of the whole heritage, for he never alleged that the other half of the land was in Laura's possession, an allegation which, if it could have been truthfully made, would obviously have been his best defence. On the facts disclosed, Laura was clearly entitled to half of her brother's land.

There are several points of interest to be noted in *Dodeswill v. Solers* (pp. 84-87 below). Walter, the defendant, held land by the lease of the father of Thomas, the plaintiff. Walter ceased for two years to pay any rent, and Thomas thereupon brought his writ of *cessavit* against him and claimed possession of the land. Walter pleaded in defence a quitclaim made to him by Thomas's father, which Thomas denied; and upon this issue the parties went to a jury. The jury found that the quitclaim alleged by Walter was a forgery. Then straightway, before the Court had delivered judgment on the jury's finding, Walter's attorney came forward and tendered the arrears of rent. Two objections to this tender being allowed were taken by the plaintiff. In the first place it was argued that there was in fact no interval between verdict and judgment, and that therefore the tender of arrears was made too late. It was further contended that the land was held by homage and fealty as well as by a rent of money, and that an attorney was not competent to render homage or fealty on behalf of his principal, nor even to give security for the payment of the money—and the attorney does not seem to have come with the cash in his hand. On

the other hand *Denham* asserted that homage and fealty need be rendered once only by a tenant, and he denied that an attorney could not give security on behalf of his principal for a money payment; and the arrears were again tendered. *BEREFORD C.J.* was at first peremptory in his ruling that the tender was made too late to save a judgment against the defendant, but apparently he thought afterwards that he had been over-hasty, for he asked the attorney what security he was prepared to find, and told him to find security for £100, or, according to another report, for a hundred marks. But either the one sum or the other seems so excessive, considering the amount of rent in arrear, that one wonders whether the Chief Justice was asking the question seriously. A very similar action, apparently between the same parties, in which also the defendant at first relied upon a forged quitclaim, is reported in vol. xv. of the *Year Book Series*, pp. 88-92. It is possible that all the reports refer to the same action.

Walter of Waleys held lands by knight's service either of William of Ross, the defendant in *Waleys v. Ross* (pp. 89-94 below), or of another, or, probably, of both William and another. When Walter died, leaving an infant son and heir, William of Ross, without waiting for the question of right to be determined in the Courts, seized the lands held by Walter and, rightly or wrongly, constituted himself guardian of them during the heir's minority. Walter's widow, Margery, was entitled to dower out of the lands held by her husband. As William of Ross was actually in possession of the lands and the issues, she must get it from him if from anyone, and against him she brought her writ; but until the legal right to the wardship had been determined by authority she refused to give up her infant boy to anyone, and kept him in her own custody. In reply to Margery's claim to dower, William of Ross said that he was entitled to the wardship of the heir, and that if and when Margery delivered him to him he would assign her dower. He was asked in Court through his counsel in right of what tenements held by Walter he claimed the wardship, and he declined to say, on the ground that Margery had no right to the information. 'You will answer the question,' the Chief Justice interjected, 'or you will give the woman her dower; and, if you have any right to the wardship of the heir, how shall it harm you to say what it is?' And then Walter said that he claimed the wardship in respect of such and such land. 'But Walter did not hold that land of you,' Margery's counsel replied: 'he held it of one Robert and Margery, and we are ready to aver that he did.' Then William of Ross asked if Margery were entitled to deny that he was entitled to the wardship seeing that she had brought

her writ against him as guardian, and had described him as guardian in it. 'What else could she do?' the Chief Justice asked. 'Whether rightly or wrongly, you are in possession, and there is no one else from whom she can get her dower. If you have wrongfully entered a tenement as guardian upon the death of her husband, she cannot, in claiming her dower, call you aught else; but she doth not thereby prove that the tenements were held of you by knight's service.' After some further objections on the part of the defendant which were overruled by the Court, the defendant was made to accept Margery's averment, and the Sheriff was ordered to bring a jury to determine the issue raised by it.

In the anonymous case reported on p. 95 the Chief Justice very summarily disposed of *Stonor's* various reasons why the defendant should not be allowed aid of the reversioner by remarking 'What you say is not so'; and he granted the aid.

The only writ which ran in the ancient demesne of the King was the little writ of right close according to the custom of the manor, which, consequently, had to serve for all forms of action. In order that defendants might not be embarrassed by uncertainty as to the nature of the action they had to defend, it was customary for a plaintiff, at the time the writ was served, to deliver to the defendant a declaration as to the form in which he proposed to prosecute his action, whether in the form of an assize of novel disseisin or as under a writ of entry or other writ; and this declaration was known as a 'protestation.' Joan Scut, the plaintiff in *Scut v. Scut* (pp. 95-99 below), with whom her husband was nominally joined, brought an action by the little writ of right close in the manorial court of Pickering, which was of the King's ancient demesne, against Cecily Scut, and complained in her count that Cecily had disseised her of certain land which she, Joan, claimed as her right. Joan, it appeared, had not accompanied her writ with the usual protestation. When the action came on for hearing in the manorial court, the defendant did not appear, and the land in demand was thereupon seized into the hand of the lord of the manor, the Earl of Lancaster. Cecily, the defendant, then surrendered to the lord of the manor the land claimed, and Joan's action consequently failed through want of a responsible defendant by reason of Cecily's stratagem of surrendering her land. This, Joan said, amounted to a denial of justice, and she sued out a writ to the Sheriff requiring him to go, together with the customary four knights, to the court at Pickering and to see that justice was done to her. The Sheriff and his knights did indeed go to Pickering, but the suitors of the manorial court were refractory and refused to do anything at all, on the ground that Cecily

did not then hold the land, having surrendered it to the lord of the manor. Joan then got a further writ directing the Sheriff to go with four knights to the manorial court and there to make a full record of all proceedings had in the matter, and to bring that record, together with the writ original and all subsidiary documents, into the Common Bench on a named day and to give notice of that day to all the parties concerned. On the appointed day the parties appeared in the Bench, and Joan's case was opened. Her counsel counted that Cecily had disseised her. Note that in this counting we have a first divergence from the procedure under an assize of novel disseisin, in which there was no count, but a complaint only. Joan's action is brought by a little writ of right close, though it is in effect of the nature of an assize of novel disseisin. Cecily's counsel at once objected that the writ was not accompanied by the customary protestation, and asked that the writ might therefore be abated. 'We have made it perfectly clear by our counting after what manner we mean to prosecute our action,' was the reply from the other side to this objection, and the Chief Justice, remarking that in the Common Bench other rules prevailed than those of the common law, upheld the writ. The action was then defended as though it had been brought under a writ of novel disseisin. Then another technical difficulty arose, though one would suppose that the point must have not infrequently arisen before and been settled. The writ was a writ of right, though a writ of right of a special kind. Under a writ of right the mise ought to be joined. Ought the mise to be joined under this little writ of right close according to the custom of the manor? In the end it was not joined, and only simple issue was joined, the issue whether the defendant had or had not disseised the plaintiff. Then an application was made to the Court to order that the writ to the Sheriff to have a jury at Westminster should direct him not to summon any who were suitors of the local court, but the Chief Justice said that he should order the Sheriff to get 'a good jury,' and under that writ he would be able to summon either suitors or strangers. We are not told whether that jury ever got to Westminster, but supposing that it did and that it found that Cecily had disseised Joan, what judgment would the Court give? Joan could not recover the tenements from Cecily, for Cecily no longer possessed them. Would the judgment order the steward of the manor to deliver seisin of the land to Joan and to enter her name in the roll as tenant? And what if the steward had already admitted someone else as tenant?

The reporters of the time, if we may judge from the number and length of the reports, attached much importance to the arguments in the

case of *Eleanor v. Halfknight* (pp. 99–112 below). Unfortunately we have only the arguments. There is no record of the judgment delivered by the Court, if any were, in fact, ever delivered. Eleanor, the widow of one Matthew, claimed from John Halfknight dower in respect of certain land. This land, according to Halfknight's statement, was at one time in the seisin of one Master John Fleming, Halfknight's cousin's father. Piers, uncle of Eleanor's husband, disseised Fleming and demised the land to Walter of Bek and Joan his wife, against whom John Fleming, son of Master John Fleming the disseisee, brought an assize of novel disseisin, which assize found that Master John Fleming had been disseised. No judgment was ever delivered upon this finding because, on account of certain objections taken on behalf of the King to the assize's finding, the case was removed *coram Rege*, and judgment was there given against Walter and Joan by reason of their default, and not upon the finding of the assize. The defendant in the present action seems to have admitted that Eleanor's husband was at one time seised of the land, but the first line of his defence was that any estate which Matthew might have had in the land by descent from Piers was annulled by the verdict of the assize—note that he did not say that it was annulled by the judgment of the Court—and therefore Eleanor was not entitled to dower. The argument on this point turned on chapter iv. of the Statute of Westminster II. This section provided that if it were objected against a wife claiming dower that her husband had lost the land by judgment, and it were found upon inquiry that that judgment was given on default and not on the merits or on the finding of a jury, then the tenant, the defendant in the action for dower, must show what right he had in the land in accordance with the writ which he had previously brought against the husband; and if he proved that neither the husband nor any other than himself had any right, then the judgment should be that the tenant go quit, and that the wife should take no dower; but, if he could not show that, then the wife should have judgment. Halfknight was forced by the Court to admit that the judgment upon which he relied was given on default, but it was not given against Eleanor's husband, and therefore, it was argued, the case did not come within the provisions of the statute. It was contended on Eleanor's behalf that as neither she nor her husband was a party to that judgment, she could not be called upon to plead to it, and she refused either to admit or deny it, while again offering to aver her husband's seisin. The defendant was obviously and naturally unwilling to accept this issue, knowing, probably, that a jury would decide it against him. He then argued that it was inequitable that Eleanor should be in a more favourable position than that

in which her husband's heir would be if he were to bring an action to recover the land from which Eleanor claimed dower, for the heir, so it was said, would be barred by the judgment. And this further consequence, it was argued, would follow from a judgment in Eleanor's favour. The mere fact of it being adjudged that she was entitled to dower from the land would be sufficient to affirm a right in it in the husband's heir, and so the right which Halfknight had obtained by the judgment would be defeated, and the heir would get indirectly what he was barred from getting directly. 'No,' said Eleanor's counsel, 'at the outside you will lose the profits of only so much land as may be assigned to Eleanor for dower, and that only during Eleanor's lifetime.' And SCROPE J. added that the reversion would always be to him from whom the dower was recovered. The contest between the parties continued at great length, each trying to show how inequitable a judgment in favour of the other side would be; neither, apparently, being able to appeal to any principle of law, either statute law or common law. In the end they went back to the point from which they started, and the question left for the Court's determination was whether or not Eleanor was barred by the fourth chapter of the Statute of Westminster II. If any judgment was ever delivered by the Court it has not been recorded.

In *Parker v. The Prior of Blythburgh* (pp. 131-133 below) the Prior was sued on a bond made by his predecessor in office to the plaintiff binding him to the payment of a hundred shillings for a horse and a roll of cloth bought of the plaintiff. It seems to have been allowed that these had been bought for the use and profit of the House. The bond had been sealed with the Prior's private seal only. The contention of the defendant was that it was not binding upon him as it was not sealed with the common seal of the House. The modern doctrine that a contract not under the common seal of a corporation is yet binding on it if it can fairly be treated as necessary and incidental to the purposes for which the corporation exists had not been established in 8 Edward II., but it was in the spirit of this principle that the plaintiff's case was argued, and the Court seemed to be wholly in agreement with it. 'If any officer of the House,' said BEREFOED C.J., 'take things which go to the profit of the House, i.e. things which are necessary for its well-being, the Prior will be answerable therefor.' This is exactly what we should expect to hear a Judge saying to-day. The parties were twice adjourned, and though we have no record of any judgment, it seems fairly clear what the judgment would be if any were ever given. Blythburgh was a cell to the Augustinian Abbey of St. Osyth in Essex. It is perhaps worth while noting here that an impression of the common

seal of Blythburgh Priory is attached to the acknowledgment of the King's supremacy still preserved in the Chapter House at Westminster. This seal is oval, of somewhat large size and without any artistic beauty. It represents the Blessed Virgin bearing a sceptre in her right hand. It is fairly perfect, and bears the legend: SIGILLUM. SANCTE. MARIE DE BLIEBURGH.

Noyers v. The Prior of St. Frideswide's (pp. 133-135 below) is historically interesting if only from the fact that it records the name and parentage of a Master of Arts of Oxford who is, so far as I can find, with the possible exceptions of two or three of the Chancellors of the University, the earliest graduate whose name and parentage are known. On Martinmas Day 1291 (19 Edward I.) the Prior and Convent of St. Frideswide at Oxford granted to William of Noyers, Master of Arts, son of Roger of Noyers, knight, an annuity of two marks a year until a sufficient benefice should be provided for him. For a dozen years they seem to have paid this annuity regularly. On the Monday after Michaelmas Day 1303 the Prior offered to William of Noyers the presentation to the church of St. Michael, 'opposite the South gate of Oxford,' a benefice in the Prior's gift, and which was, the Prior said, of the yearly value of ten pounds. William refused it, denying that it was worth so much, and asserting that it was no sufficient benefice for him, a Master of Arts and the son of a knight. The Prior thereupon refused to pay the annuity any longer, and William sued him for the arrears. The value of the benefice was left for a jury to find: but William's counsel told the Court that even if the jury found the benefice to be worth ten pounds a year, he should still ask their judgment on the question whether it was a sufficient benefice for a man of the plaintiff's position.

Exactly what happened in *Whittlesey and Sedgeford v. Lawrence* (pp. 135-140 below) does not stand out too plainly either in our reports or in the record in the Plea Roll, but a careful study of our authorities seems to warrant the following exposition of the facts and of the course and result of the action. The plaintiffs, Alexander and John, were cousins, the grandchildren of one Agnes. Agnes had an acre of land in her own right. She left three daughters and no son. Alexander was the son of one of these daughters; John of another. The third daughter left no issue. Alexander and John were, therefore, co-heirs of Agnes. Agnes alienated her acre of land to her son-in-law, Roger of Whittlesey, husband of her daughter Gillian and father of Alexander. Roger afterwards granted the land to William Hereward, father of Robert, and bound his heirs to the warranty. At the date of the action Godfrey Lawrence, the defendant in the action, was in possession of the

land for a term by a lease from Robert, who had succeeded to his father's estate of inheritance, and the reversion was to Robert. When the case was called on, Geoffrey did not appear, and Robert asked the Court to allow him, as the reversioner, to defend his right, and he was received to do so. The plaintiffs' case was that Agnes was of unsound mind when she alienated the land to Robert, and that, consequently, her grant was void and without legal effect. So far as one can see, these facts were not contested. Robert's defence was this. Alexander's father had granted the land to him, Robert, and had bound his heirs to the warranty. Alexander was his father's heir and was consequently barred by his father's deed from claiming the land or any part of it. That contention, unless Alexander could say something more, disposed of Alexander's claim. In answer to John's claim, Roger simply vouched Alexander, by virtue of his father's deed, to warrant him. No attempt seems to have been made to support Agnes's grant. Its invalidity appears to have been admitted. Alexander replied that he was not claiming the land in virtue of his father's seisin, but in virtue of his grandmother's; and he said further that as he had no assets by hereditary descent from his father he was not bound by his father's warranty. Roger then pleaded that Alexander had in fact assets by hereditary descent from his father; and, upon this plea, the Sheriff was ordered to get a jury to determine this issue. All this, of course, supposing that Agnes's alienation was bad—and it seems to have been admitted that it was bad—did not affect John's claim. Alexander appears to have been allowed by the Court to surrender a moiety of the acre to John, who was thereupon put in seisin of it, and Alexander was left to fight Robert on the issue of assets or no assets descended to him from his father. On the day appointed for the trying of this issue by a jury Alexander failed to appear to abide the averment which he had offered, namely that he had no assets by descent from his father. The Court, therefore, gave judgment that Robert should have land from Alexander to the value of the land which John had recovered—keeping, it must be presumed, the other half acre, or the right to the reversion of it, which had been claimed by Alexander.

The facts disclosed in *Cleasby v. Applegarth* (pp. 140–147 below) are unusual. Annabel, the widow of Robert of Cleasby, claimed from Thomas, son of Robert of Applegarth, certain lands which she said were granted to her and her deceased husband jointly by Robert of Applegarth, the defendant's father, and were afterwards demised by her husband, 'whom in his lifetime she could not oppose,' to the defendant. Thomas's first objection was a purely technical one. He said that

he held the land claimed jointly with his wife Isabel under the provisions of a fine levied in 32 Edward I. and Isabel was not named in the writ; and he asked the Court to quash the writ. Annabel replied that Thomas could not quash her writ by reason of this fine, because she and her husband had been in seisin of the land for a long time after the date of the fine, until Robert, her husband, had demised the land to Thomas, and this she offered to aver. Then Thomas told a rather peculiar story. The truth of the matter was, he said, that in 28 Edward I. one Alan of Studhow brought a writ of formedon against Robert of Cleasby and this same Annabel, his wife, and claimed certain land from them. Robert and Annabel vouched Thomas, the present defendant, to warranty, and judgment was given that Alan should recover from Robert and Annabel the land which he claimed, and that Robert and Annabel should receive from Thomas land to a like value out of land which had come to him, Thomas, by hereditary descent. The Sheriff, in execution of that judgment, gave Robert and Annabel seisin of the land now claimed by them. But when it was shown by Thomas that this was not land which he had by hereditary descent but acquired by him by his own purchase, a judicial writ was served on the Sheriff directing him to re-deliver seisin of this land to Thomas and to give Robert and Annabel seisin of other land which had accrued to Thomas by hereditary descent. All this was done by the Sheriff, and so Thomas said that he now held the land claimed by Annabel in the same manner in which he held it before it was delivered to her and her husband, that is, jointly with his wife in virtue of the fine. That was Thomas's story. Annabel, on the other hand, while admitting that the land which she was claiming was delivered to her and her husband as land to the value of that which Alan of Studhow recovered from them, denied that it had ever again passed out of the seisin of herself and her husband until her husband demised it to Thomas. And that was the issue left between the parties. How, if at all, it was determined is not recorded, but the real facts must have been easily ascertainable, one would suppose, by a jury of the venue.

In *Corbet v. The Prior of Kirkham* (pp. 148-154 below) Thomas Corbet, the plaintiff, sought to recover from the Prior not land but rent, and the writ he had purchased was a writ of cosinage. In the case of rent due from a tenant to his lord being in arrear the natural course was for the lord to levy distress, or, in the alternative, he might bring his writ of customs and services. The writ of cosinage was provided for the recovery of land and its appurtenances held by the plaintiff's *consanguineus* in demesne as of fee. Was Thomas entitled to use this

writ for the recovery of rent only when the much simpler and more straightforward remedy of distress was open to him? The Prior contended that he was not, and that the writ, therefore, ought to be quashed. The point was argued at great length, and at ~~one~~ **one** time the Chief Justice seemed inclined to think that the writ could not be maintained. Whether it were maintainable or not in the circumstances, it certainly placed the plaintiff in a position of disadvantage in some respects. If he had levied distress in the ordinary way, he would have retained his lordship, with the natural profits of that lordship. These he would necessarily lose if he were successful in his claim under a writ of cosinage which inferentially disclaimed the relationship of lord and tenant. Further, if he were successful, he would recover only that particular term's rent which he was claiming and would lose all right to claim any arrears, though it was argued that though he could not recover arrears he might recover damages in lieu of them. It is difficult to understand why the plaintiff did in fact proceed by way of a writ of cosinage when the simpler and much more satisfactory remedy of distress seemed open to him. We probably do not know the whole story, and it is of small profit to hazard guesses. In the end, for some reason which is not apparent from the reports, the Chief Justice came to the conclusion that the writ was maintainable, though he did not forget, in giving judgment to that effect, to impress upon the plaintiff the disadvantage he had brought upon himself by persisting in it. 'He hath lost his lordship for ever.'

Calveick v. Ferrers (pp. 155-165 below) was another writ of cosinage. Here there were two Thomases concerned, who seemed a little apt to get confused with each other in the mind of the Court. There was Thomas of Ferrers the elder, and there was Thomas the younger, son and heir of Thomas the elder. Thomas the younger died without leaving issue, and his aunt Margaret, sister of Thomas the elder, claimed to be his heir. But Thomas the younger had a half-brother John, the son of Thomas the elder by a second wife; and as soon as Thomas the younger died, this John took possession of the family estate. Margaret thereupon brought her writ of cosinage against him. John, being of the half-blood only, clearly had no right, as the law then stood, to succeed to Thomas's estate. But he was an infant under age, and if he could make out anything of the nature of a technical right to hold the land he could claim that the action should stand over until he attained full age, retaining possession of the land in the meanwhile; with this further advantage, namely that the forced admission by the claimant of such facts as would entitle the defendant to have his age allowed could probably be used by the defendant to bar any action

which the plaintiff might bring against him when he attained his full age. He said that he was in possession as his brother's heir, and was therefore entitled to have his age allowed him. The plaintiff was thereby put in a position of some difficulty. If she said that the defendant was not Thomas the elder's heir because he was only of the half-blood, she would be raising a question to which the defendant could not plead while he was under full age, and he would, therefore, have his age allowed him, and when he came of age he would probably be able to bar her action by pleading that she had allowed the admissibility of his plea that he was in seisin as his brother's heir. If, on the other hand, she could show that he was a tollor or unauthorised intruder, his age would not be allowed him; but in that case she must show how he was a tollor, as by being a bastard, or being born of another *ventre*, or how else. So she told the whole story, how that Thomas the elder had two wives, and that John was born of the second wife, and so was of the half-blood only; and so she made a tollor of John. And the Chief Justice said to her: 'If you had not alleged that the defendant was a tollor, he would have awaited his age; and if he had awaited his age it is very unlikely that you would ever have attained your end. Now you are at our judgment on a point of law.' And the point of law on which the parties awaited judgment was apparently, from what the record says, whether John could be called upon, while he was under age, to answer the plea that he was of the half-blood only. No judgment has been recorded.

The case of *The King v. The Bishop of Norwich* (pp. 166-179 below) raised a question which does not appear to have been raised in exactly the same form either before or since—the question whether time runs against the King when he is acting, not in his own right, but as the assignee of another's right. The story, so far as we can gather it from the reports and the Plea Roll, is this. William of Bovill held the manor of Badingham in Suffolk of the King. The advowson of the Church of Badingham being appurtenant to the manor, William was patron of the church in right of his manor, and as such patron had appointed John of Badingham as parson. When John of Badingham died on the Feast of St. Nicholas in the sixth year of Edward II. (December 6, 1312), and the church thereby became vacant, William of Bovill presented John of Catford to the Bishop of Norwich for institution to the church. The Bishop made the usual inquiries and found that William was in fact the true patron, and he was ready to institute his nominee to the Church. But John of Catford, for some reason of which we are given no hint, neglected to prosecute his request for institution, and so, six months after the death of John of Badingham, the Bishop

himself appointed to the church *per lapsum*. Now at some time, exactly when we are not told, William of Bovill had alienated the advowson of the church together with a parcel of the land of the manor, and he had done this without obtaining the King's licence. By this unlicensed alienation the advowson, so the King contended, had become forfeit to him, and as soon as he heard of John of Badingham's death he presented John of Woodford to the Bishop for admission and institution. As the Bishop had satisfied himself that William of Bovill was the true patron, and as William had presented a clerk for institution, he refused to admit the King's nominee. The King thereupon brought his writ of *quare impedit* against William of Bovill and recovered from him by judgment of the Court the right to present to the vacant church, and then straightway presented his nominee to the Bishop for institution. But by this time the Bishop had himself appointed *per lapsum*, and the church was full; and the Bishop said so. The King then brought his writ of *quare non admisit* against the Bishop; and it is this action which is reported in the present volume. The issue for the Court to determine was whether time ran against the King when he was seeking by a writ of *quare non admisit* to enforce a right which was not his inherently by virtue of his Crown, but of which he had obtained what one may call only accidental possession as the result of legal process. In the first place it is proper to remark that chapter v. of the Statute of Westminster II. does not seem to apply, as that statute did not deal with writs of *quare non admisit*, but with writs of *quare impedit* and *darrein presentement* only; and the precedents referred to by the Bishop's counsel in justification of his refusal to accept the King's presentee seem to have been cases of *quare impedit*, and therefore not exactly in point. The arguments on both sides were long but indecisive. There was nothing in any statute which provided for the exact question at issue. There was, apparently, no precedent to guide the Court save the principle followed in the previous writs of *quare impedit* where the King had failed when he had contended that time did not run against him when he was acting as a merely accidental possessor of a right and not in his own inherent right as King. But the Court would not take the responsibility of determining so delicate a point. They referred the matter to Parliament, and the Justices themselves took part in the discussion of it there. We have no report of this discussion, but the result of it was that the King ordered his action to be stayed. Though this was not technically the same thing as a judgment for the Bishop, it practically amounted to the same thing; and one of our reporters takes the result to have all the force of an actual judgment; for he concludes his report with

these words: 'And so note that time doth not run against the King when he recovereth of his own title, but if he recover in virtue of the grant of another, then time will run against him as it would have run against him by whose grant he recovereth' (p. 175 below). And it is instructive to note that a few years later it was formally provided by statute that in certain circumstances time should run against the King. Chapter viii. of Statute I. of 17 Edward II. runs: 'Of churches being vacant, the advowsons whereof belong to the King, and other present to the same, whereupon debate ariseth between the King and other, if the King by award of the Court do recover his presentation, though it be after the lapse of six months from the time of the avoidance, no time shall prejudice him, *so that he present within the time of six months.*'¹ Much more, then, it would seem that time should run against him when the advowson was not of his own right and he had only an accidental right to present. There are several blunders in names in the record of this case which, on a first reading, tend to our bewilderment. A little consideration makes it clear that John of Catfield was the clerk presented to the Bishop by William of Bovill, and that John of Woodford was the clerk presented by the King, yet in mentioning the King's presentee the roll four times in the earlier part calls him John of Catfield, and only twice in the latter part correctly names him as John of Woodford, while always describing William of Bovill's presentee as John of Catfield. The record was a very sacred document, held to be so infallible that no averment that ran contrary to it could be received. One wonders what would have happened if some one at a later time had wanted to aver that John of Catfield was not the King's presentee. The reporters of Versions II. and III. make the same confusion, naming John of Catfield as both the King's presentee and William of Bovill's. Version II. does once call the King's presentee John of Woodford, whom Version III. never mentions at all. The reporters probably just glanced at the roll or the clerk's note for it to get the names and blindly followed the clerk's mistake; and I suppose that they did not trouble themselves to read their reports after they had written them—but what mediaeval reporter did?

The story set out in *Ree v. Washingley* (pp. 179–191 below) takes us back far beyond Edward II.'s time. The question raised in this action was whether the advowson of the church of Washingley was or was not appurtenant to the manor of Washingley. And the question came to

¹ De ecclesiis vacantibus quarum aduocaciones spectant ad Regem et alii presentauerint ad eandem ita quod contentio inter dominum Regem et alios oriatur si Rex per considerationem

presentationem suam recuperavit licet post lapsum temporis sex mensium a tempore vacacionis nullum currit ei tempus dum tamen Rex presentauerit infra predictum tempus sex mensium.

be raised in these circumstances. The manor was held of the King by knight's service. The tenant at the time of the action was an infant, and the wardship of his lands was therefore in the King's hand. If the church were appurtenant to the manor the King would consequently have the right to present a clerk to it. But Elizabeth of Washingley, the infant tenant's mother, claimed the right to present to the church on the ground that it was not appurtenant to the manor. Each side gave its own story of the church. The King's case was this. Once before, in his father's time, the tenant of the manor died, leaving an infant heir. The King, Edward I., then seized the wardship of the manor and assigned it, advowson and all, to Humphrey of Walden, and, upon a vacancy in the church occurring during Humphrey's time, Humphrey appointed a clerk without any objection being taken by anybody that the advowson was not appurtenant to the manor, and that he that held the manor was not consequently entitled to appoint to the church. Elizabeth admitted this, but she said that though Edward I. had in fact seized and assigned the advowson as appurtenant to the manor, he had no right to do so, and that acquiescence in his illegal action was nothing more than the result of negligence or indifference on the part of the next of kin of the infant heir. She contended that the advowson was not and never had been appurtenant to the manor. Far back in time, she said, longer ago than the time of memory, the advowson of the church belonged to the Abbot of Crowland, and she asserted presentation after presentation made by the Abbot. Then an exchange was effected by an ancestor of the present infant tenant, one Richard of Washingley. This Richard gave the Abbot a messuage and a virgate of land as the price of the advowson, which the Washingleys had held ever since of the Abbots of Crowland by the yearly service of a rose, and not by knight's service of the King or any one else. She herself, she said, was the infant's mother, and it was her duty to take such order in respect of the appointment to the church as was most for her infant son's advantage, and so she claimed the right to present. Then counsel for the King adduced Domesday in proof of his case, and Domesday showed that the church was appurtenant to the manor. 'Yes,' said Elizabeth, 'it may be that at the time when Domesday was written the church was appurtenant to the manor, but Domesday is a long while ago, before the time of memory, and since Domesday was written, and again before the time of memory, the advowson passed to the Abbot of Crowland, and the Abbot of Crowland granted it to us.' She had nothing to offer in proof of what she said, nothing but her own averment that the facts were as she had stated them. The Court ruled that an averment only, sup-

ported by no sort of documentary or other evidence, could not override the testimony of Domesday, and gave judgment for the King. A version of the passage from Domesday relied upon for the King is given by one of our reporters (p. 186 below). It bears not the remotest resemblance to anything to be found in the Domesday of Huntingdonshire, and must have been the deliberate invention of the reporter, perhaps to supply what had wholly slipped from his memory. The passage is given correctly enough in the Plea Roll. This ancient church of Washingley has entirely disappeared. In or before 1447 the parish had been united for ecclesiastical purposes to that of Lutton in Northamptonshire, and the building seems to have been used for the repair of the church at Lutton. The rector of Lutton is now titular vicar of Washingley.

In *Brueys v. The Abbot of Fécamp* (pp. 204-208 below) we find the Justices anticipating modern doctrine and ruling that a technically faulty charter must be, if possible, interpreted so as to give effect to its maker's intentions when those intentions are clearly to be discovered. The facts, as we gather them from the report and the record, are seemingly these. One A., by a deed made in Court, acknowledged that he had granted certain tenements to B. 'to have and to hold etc. to him and to the heirs of his body gendered, and if he should die without heir of his body gendered etc. then to Joan [the actual plaintiff in the action] and to the heirs of her body gendered.' B. died without heir of his body, and Joan brought her writ of formedon in the remainder to recover the tenements, which, the writ ran, were to remain to her and to the heirs of her body in the event of B. dying without leaving heir of his body. But, unfortunately for Joan, A. or A.'s draftsman did not know his business and disregarded forms and terms of art. Instead of saying that if B. died without heir of his body the tenements were to remain to Joan and the heirs of her body, he drafted the charter in the faulty form given above. Joan's counsel, who knew well enough that a charter so drafted might likely enough be as a reed that would break in his hands if he tried to support himself by it, preferred at first to affect ignorance of its existence. He would aver, he said, that the grant was made in the form laid in the writ, and in the writ the essential words 'shall remain' had been artfully introduced. Hard swearing would have been necessary to support such an averment if the Court had accepted it. But there were technical reasons why an averment should not be allowed in the circumstances, and these were pressed by counsel on the other side. Driven by the Chief Justice to produce proof of some sort in support of Joan's writ, *Denham* at last produced the faulty charter, having nothing else to show. Then the weakness of Joan's

case was at once apparent, and the defendant had plenty to say in support of his contention that there was no case for him to answer; and this was true enough if the Court were going to administer strict law. But, after some discussion, the Court thought that A.'s intention could be clearly gathered from the charter, faulty though it was. 'Not every man is a lawyer,' INGE J. said in excuse of the draftsman's ignorance of the exact form of words he should have used, 'but the grantor's intention is plain enough to anyone who understands Latin'; and the defendant was told that he must answer the writ.

In *Wickham v. The Abbot of Cirencester* (pp. 210-213 below) Thomas of Wickham sought to recover from the Abbot certain land in Burton in Berkshire. Burton lay within the manor of Shrivenham, was a limb of the manor, and all the land in Burton was, Thomas asserted, ancient demesne. He, consequently, brought his action by a little writ of right close according to the custom of the manor, which was the only writ which could be used for any form of action in a manorial court of ancient demesne. The Abbot, on the other hand, said that the land which Thomas claimed was held by him and had been held by his predecessors in office from time immemorial as the free alms of his church of Cirencester, and was, therefore, not pleadable in the manorial court according to the custom of the manor, but in the Court of Common Pleas according to the common law of the land. Upon this contention he got a writ transferring further argument to the Bench, where the question was again raised. Thomas appeared to show cause why the action should be sent back for hearing and determination to the manorial court, and the Abbot to show cause why it should remain in the Bench. The Abbot's point was that the land had been granted to the Abbey of Cirencester by King Henry I., its founder, and that this royal grant constituted it frank fee, and therefore removed it out of the jurisdiction of the court of ancient demesne. Thomas asserted that the land he was seeking to recover from the Abbot was not part of the land granted to the Abbey by Henry I., but that it was, like all the rest of the land in Burton, still ancient demesne and pleadable only, as it always had been pleadable only, in the court of ancient demesne. He contended that the charter on which the Abbot relied went back beyond the time of man's memory,¹ while he was ready, he said, to prove that his own ancestors had held the land he was

¹ It was ruled in 12 Henry IV. that a charter made before the time of legal memory need not be answered, unless it was a King's charter. The charter on

which the Abbot relied was, in fact, a King's charter. See *Y.B.B., Trin., 12 Henry IV.*, p. 23, plea 7.

seeking to recover from a time beyond recollection until the Abbot's predecessor in office had unlawfully disseised his. Thomas's, grandfather of it ; and again he asked that the action should be sent back to the manorial court for hearing and determination. The Justices of the Bench adjourned the matter to another day, on which day Thomas failed to appear, and his action against the Abbot was consequently dismissed and he and his pledges for prosecution were put in mercy.

LEGAL CALENDAR

FOR THE

EIGHTH YEAR OF KING EDWARD II.

The eighth year of the reign began on July 8, 1314. The Sunday letters were F for 1314 and E for 1315. In 1315 Easter Day fell on March 23.

JUSTICES OF THE KING'S BENCH.

Roger the Brabazon C.J. ; Gilbert of Roubery ; Harry Spigurnel.

JUSTICES OF THE COMMON BENCH.

William of Bereford C.J. ; Lambert of Trikingham ; John Bacon ; John of Benstede ; Harry the Scrope.

NAMES OF COUNSEL WHO ARE MENTIONED IN THIS VOLUME.

Aldbrough, Richard of	Malberthorpe, Robert of
Bacon, Geoffrey	Miggeley, William of
Bingham, William of	Passeley, Edmund of
Burton, Thomas of	Prilly, Hugh
Cambridge, John of	Russell, Robert
Claver, John	Scrope, Geoffrey the
Denham (Denom), John of	Stonor, John of
Denham (Denom), William of	Toudeby, Gilbert of
Friskenev, William of	Trevanion, John of
Hedon, Robert of	Wallingford, Piers of
Hengham, or Ingham, John of	Westcote, John of
Herle, William of	Willoughby, Richard of
Ingham, <i>see</i> Hengham	

Of these the following are mentioned in the Reports but not in the Plea Roll of the Michachmas term of the eighth year :

Aldbrough, Richard of	Trevanion, John of
Burton, Thomas of	Wallingford, Piers of
Hedon, Robert of	Westcote, John of
Toudeby, Gilbert of	

The following are mentioned in the Plea Rolls only :

Asshele, Robert of	Laufer, Nicholas
Bever, John	Newton, Thomas of
Kingshemmede, Adam of	

THE YEAR BOOKS OF EDWARD II.

VOL. XVIII.

EIGHTH YEAR.

PLACITA DE TERMINO SANCTI MICHAELIS ANNO
 REGNI REGIS EDWARDI FILII REGIS
 EDWARDI OCTAVO.

1. GRYMBAUD v. HUBY.¹

I.²

Assisa noue disseisine ou le tenaunt dit qe lui porta vn assise de nouele disseisine de mesme les tenementz ore mis en vewe et demaunda iugement etc. le pleintif dit qe lautre bref fist mencionn de frauntenement en N. et cesti bref fet mencionn de frauntenement en T. par qei etc.

Robert Grymbaud porta vne assise de nouele disseisine vers Iohan de Houby et plusours autres et se ³pleyna estre disseisi⁴ de son franktenement en Twford et mist en vewe etc. xx acres de Boys.⁵ Lassise iorne en baunk propter difficultatem.

Hl. Autrefoithe porta cesti Iohan vne assise de nouele disseisine vers mesme cesti Robert et fist sa pleynte du maner de North Wyton⁶ oue les appurtenances et myst en vewe ⁷des Iurours⁸ mesme cele boys ⁹come ceo qe fut liuere al auaundit Iohan¹⁰ com ceo qe fut appurtenant au maner ¹¹par quele assise il recoueri le maner oue les appurtenances et mesme celi bois liuere al auaundit Iohan com ceo qe fut appurtenaunt al maner¹² par vewe des Iurours et nentendoms mie qe assise sur assise etc.

Denum. Nostre bref veot qe nous sumus disseisi de nostre raunktenement en Twford et vostre bref ne fit mencionn si noun de fraunktenement en Norwyntone¹³ par quay vous ne poetz nient dire qe ceo soit assise sur assise et prioms lassise.

Scrop. Appurtenaunce du¹¹ maner put estre en plusours¹⁵ villes.

Et hoc est verum set tunc oportet nominare omnes villas vbi¹⁶ librum tenementum sit.

Scrop Iustice a Iohan Heuby. Demande vous est si Twford soit

¹ Reported by B, C, E, H. and X. Names of the parties from the Plea Roll.
² Text of (1) from B collated with X. ³⁻⁴ pleint etc., X. ⁵ X adds etc.
⁶ Norwyntone, X. ⁷⁻⁸ de Iure, X. ⁹⁻¹⁰ X omits. ¹¹⁻¹² Supplied from X.
¹³ From X; B has N. ¹⁴ au, X. ¹⁵ diuerses, X. ¹⁶ in quas [sic], X.

PLEAS OF MICHAELMAS TERM IN THE EIGHTH
YEAR OF THE REIGN OF KING EDWARD
THE SON OF KING EDWARD.

1. GRYMBAUD *v.* HUBY.¹

I.

Assize of novel disseisin where the tenant said that he himself had previously brought an assize of the same tenements as were now put in the view, and he asked judgment etc. The claimant said that the other writ spoke of a freehold in N., while the present one spoke of a freehold in T.; and so etc.

Robert Grymbaud brought an assize of novel disseisin against John of Huby and several others; and he complained of being disseised of his freehold in Twyford; and he put in his view etc. twenty acres of woodland. The assize was adjourned into the Bench *propter difficultatem*.

Herle. At other time this John brought an assize of novel disseisin against this same Robert, and his complaint was in respect of the manor of North Witham with the appurtenances, and he put in his view for the jurors this same woodland as that of which the aforesaid John has had livery as appurtenant to the manor. And by that assize he recovered the manor with the appurtenances, and livery of this same woodland was given to the aforesaid John by view of the jurors as being appurtenant to the manor; and we do not think that assize upon assize etc.

Denham. Our writ reciteth that we are disseised of our freehold in Twyford, and your writ made mention only of a freehold in North Witham; and therefore you cannot say that this is assize upon assize; and we pray the assize.

Scrope. The appurtenances of a manor may lie in several vills.

And this is true, but in such case all the vills where there is a freehold ought to be named.

SCROPE *J. to John Huby.* You are asked whether Twyford be

¹ See the Introduction, p. xxiv above.

ville par soy ou hamel de Northwyt¹ a quey vous ne respoundez nient.

Et il dient qil sont diuers villes ²en soy.

Hle. Nous portames nostre assise del maner de N. od les appurtenances et³ adunqez nous mesmes en vewe des iurours mesme cel boys a quel plainte Roberd respondy et la accepta et sur cel plainte lassise passa et la seisine liuere a nous par vewe des iurours par quei nentendoms mie etc. vt supra.

Berr. Tut eut Roberd dist qe le boys feut en autre ville il nust pas abatu le bref ne la pleynte nient le plus.

Scrop. Vous ne poetz nient dire qe assise passa si noun des tenementz des queux la court auoit garaunte mes la court nauoyt nul garaunte a tenir ple si noun de fraunk tenement en N. et nous pleignoms de nostre fraunk tenement en Twyford et prioms lassise.

*Inge.*⁴ Coment ⁵qe nous auoir⁶ voilletz vous auerer qe assise passa⁷ etc. vostre record ne prouereit ⁸si noun ⁹si noun¹⁰ qe assise passa de fraunk tenement en N.¹¹

Hle. ¹²pria le record pur le tenant.¹³

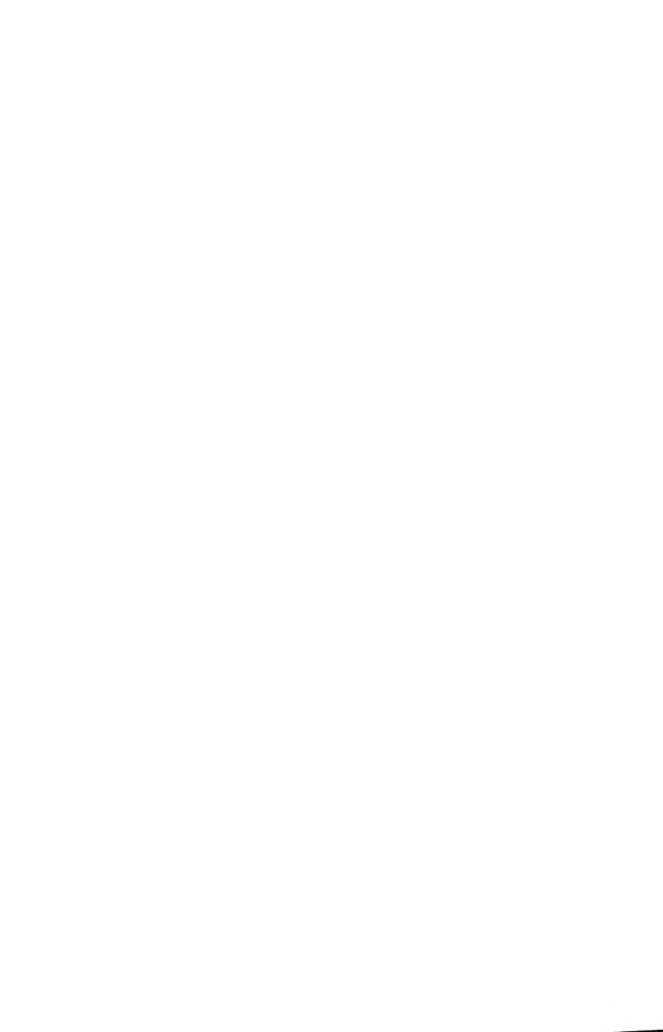
Inge. Purreit Roberd Grymbaud auer latteynte du boys qest en C.¹⁴ [sic] sur ¹⁵le faus serment fait en¹⁶ vn assise qe passa du fraunc tenement en R.¹⁷ [sic] quasi diceret non. Item il nest mye de ceste assise come serroit de vn Precipe quod reddat manerium etc. qe en tieu cas le maner attret a lui touz les appurtenances.¹⁸

Malm. Il auereit bien latteinte ¹⁹sur lassise qe passa²⁰ sur la pleynte etc. qe nous ne lui purroms iames abatre.

Scrop. Il purroit bien porter latteinte mes ²¹il ne prendroit²² rien des tenementz qe sount en autre ville qe en la ville nome en le primer²³ bref.

Berr. En assise de nouele disseisine si vous pledetz issint qe les tenementz mys en vewe sount en tiele ville et ne mie en la ville nome en bref et si troue soit etc. et pledetz outre ²⁴a la assise²⁵ et lassise die qe les tenementz sount en la ville nome en le bref et die faux ne put il mye auoir sur cele atteynte quasi diceret sic sic hic.

¹ Norwytone, X. ²⁻³ From the first of these points to the other X originally ran et ne fut en maner de N. oue les appurtenances. These words were afterwards struck out, and *Hle* substituted for them. ⁴ X adds ad idem. ⁵⁻⁶ Expuncted for erasure. ⁷⁻⁸ qe prouez qe lassise passa del fraunc tenement, X. ⁹⁻¹⁰ rien, X. ¹¹⁻¹² Expuncted for erasure. ¹³ Twyford etc., X. ¹⁴⁻¹⁵ le recorde prone, X. ¹⁶ T.X. ¹⁷⁻¹⁸ Added from X. ¹⁹ N., X. ²⁰ appendauntz, X. ²¹⁻²² Expuncted for erasure. ²³⁻²⁴ ne prendreit ia, X. ²⁵ X omits primer. ²⁶⁻²⁷ X omits.



a vill in itself or only a hamlet of North Witham; and you answer naught thereto.

And he said that Twyford and North Witham were separate and independent villis.

Herle. We brought our assize in respect of the manor of North Witham and the appurtenances, and we then put in view of the jurors this same wood; and Robert made answer to that complaint and accepted it¹; and upon that complaint the assize passed, and seisin was given to us by view of the jurors; and we do not think etc. *ut supra.*

BEREFORD C.J. Even though Robert had objected that the wood was in another vill, he would not thereby have abated the writ, nor the plaint any the more.

Scrope. You cannot maintain that the assize passed in respect of tenements other than those in respect of which the Court had warrant to grant it, but the Court had no warrant to hold a plea save in respect of a freehold in North Witham; and we are complaining in respect of our freehold in Twyford, and we pray the assize.

INGE J. Even though you were ready to aver that assize passed, your record [by which you would support your averment] would prove naught more than that an assize passed in respect of a freehold in North Witham.

Herle, on behalf of the tenant, prayed the record.

INGE J. Could Robert Grymbaud get an attaint in respect of a wood in C. because an assize which passed in respect of a freehold in R. made false oath?—*implying that he could not.* Further, this assize is not like a *precipe quod reddat manerium* etc., in which all the appurtenances are included in the word ‘manor.’

Malberthorpe. He certainly would have an attaint upon the complaint etc.² for we should never be able to abate it.

Scrope. He might certainly bring his attaint, but he would get naught of the tenements, for they are in a vill other than that named in the first writ.

BEREFORD C.J. If, in an assize of novel disseisin, you plead to the effect that the tenements put in view are in such a vill and not in the vill named in the writ, and it be so found etc., and then you plead over to the assize, and the assize saith that the tenements are in the vill named in the writ, and [so saying] saith falsely, cannot the tenant have an attaint upon that?—*implying that he could.* So here.

¹ i.e. made no objection to its form. into ‘that the assize passed upon other

² Probably this etc. may be expanded tenements than the writ warranted.’

Scrop. Nest mye merucille qe ceo est vne dilatorie.

Toud. Si ieo porte vne precipe quod reddat vnam carucatam¹ terre etc. in tali villa et ieo face la vewe des [sic] partie² des tenementz en autre ville le tenaunt plede ouesqe moi et ³perde quidetz vous qe iugement ne se fra⁴ auxi largement come ieo ay demande quasi diceret sic sic ex parte ista del houre qe mesme les tenementz furent autrefois mys en vewe de Iuroirs et la pleynte faite de mesme les tenementz sicome des⁵ appurtenauntz et nous sumes prest de auer qil soumt appurtenauntz et il en court accepta mesme la pleynte et pleda ouesqe nous iugement etc.

Scrop Iustice. Il nad mye defaute en le recorde qe le iugement est assetz bien ne les Iurours ne vnt mye fait faux serment en droit de ceux tenementz etc. qil ne fuissent⁶ chargez si noun de fraunk tenementz en N. etc. par quay ceo fait qest de fraunc tenement en autre ville si est saunz garauntie.

Spig. ad idem. Si vous eyetz vn maner en diuers villes et vous voilletz auer⁷ lassise du maner il vous couient nomer touz les villes en vostre bref et en ceo cas nulle ville feut nome forsque N. par quay ceo qe les iurours firent en droit de la vewe⁸ etc. du fraunc tenement en autre ville ceo fut tut saunz garauntie.

Hle. Si vous eietz vn maner en ⁹.iiij. hameletz ou en v. et¹⁰ seietz disseisi et puis chekun des hameletz soit fait maner par luy par longe continuaunce puis¹¹ apres vostre heir porte seon precipe quod reddat manerium ¹²de C.¹³ cum pertinenciis saunz nomer les autres tenementz qe furent ¹⁴en hameletz¹⁵ il recouera en la manere com il passa¹⁶ hors de vostre seisine et ceo par cele parole cum pertinenciis.

Malb. Si ieo me pleine estre disseisi de vn verge de terre od les appurtenantz a quai commune de pasture est appurtenaunt¹⁷ [et] ieo recouere la tere od les appurtenaunce ieo ay recouere la commune ouesqe ¹⁸la pasture¹⁹ et si nauoit il nul assise de commune de pasture et tut feut la tere en vne ville et la pasture en vn altre ville ieo recoueray la pasture tut ne feust la ville ou la pasture est nome en le bref sic hic et tut par resoun dappurtenaunce et si ieo fuisse disseisi de la pasture ²⁰apres le recouerer ieo aueray²¹ la reddisseisine.

¹ acram, X. ² X omits. ³⁻⁴ prie iugement quele iugement se fra
quasi diceret, X. ⁵ Expuncted for erasure. ⁶ furent, X. ⁷ vers, X.
⁸ ville, X. ⁹⁻¹⁰ .iiij. hameles ou vous, X. ¹¹ Added from X. ¹²⁻¹³ X omits.
^{14, 15} hameles, X. ¹⁶ furent, X. ¹⁷ appendaunt, X. ¹⁸⁻¹⁹ Supplied from X.
²⁰⁻²¹ ieo recouerci par, X.

Scrope. There is nothing remarkable about that. It is a dilatory plea.

Toudeby. If I bring a *precipe quod reddat* to recover a carucate of land etc. in a named vill, and I make the view of a parcel of the tenements [claimed] which are in another vill, and the tenant plead against me and lose, do you suppose that I shall not get judgment to the full extent of my claim?—*implying that he would get such judgment.* So here, since these same tenements were at other time put in the view of jurors, and the complaint was made in respect of the same tenements as appurtenances, and we are ready to aver that they are appurtenances, and the tenant accepted in Court [the form of] our complaint and pleaded against us. Judgment etc.

SCROPE J. There is naught in the record in which fault can be found, for the judgment is a good one and the jurors made no false oath in respect of these tenements etc. for they were charged only in respect of a freehold in North Witham; wherefore aught that was done in respect of a freehold in another vill was without warrant.

SPIGURNEL J. [K.B.] *ad idem.* If you have a manor lying in divers villis and you want an assize in respect of the manor, you ought to mention in your writ all the villis [in which it lieth]; but in this case no vill except North Witham was named, and therefore what the jurors did in respect of the view etc. of a freehold in another vill was wholly without warrant.

Herle. If you had a manor lying in four or five hamlets and were disseised, and then afterwards each of these separate hamlets became a manor in itself by long continuance, and then, later, your heir were to bring his writ to recover the manor of C. with its appurtenances, without naming the other tenements that were in hamlets, he would recover the manor as largely as it passed out of your seisin; and this by virtue of the words 'with the appurtenances.'¹

Malberthorpe. If I complain that I have been disseised of a virgate of land and its appurtenances, to which common of pasture is appurtenant, and I recover the land, to which common of pasture is appurtenant, with the appurtenances, I have recovered the common with the pasture; and though no assize were brought for the common of pasture, and though the land was in one vill and the pasture in another vill, yet I shall recover the pasture notwithstanding that the vill where the pasture lieth was not named in the writ. So here, and this by reason of appurtenance; and if I should be disseised of the pasture after my recovery, I shall have the redisseisin.

¹ i.e. he would recover the manor as it existed when it left your hands—that is, the present nominal manor and the subsidiary manors by prescription.

Scrop dit ¹quod non.²

Berr. Si vous poussetz mayntenir qil auerount latteynte et de mesme les tenementz dount il se pleyna a ore il naueroitt iames lassise etc.³

II.⁴

Vn Robert Grymbaud porta vne assise de nouele disseisine vers Ion Hoby et se pleynt estre disseisi de soun fraune tenement en G. et mist en sa pleynte .CC. acres de boys.

Scrop. Deuant sez hures portames vne assise de nouele disseisine deuant certeynz Iustices assignez en le Counte de Cantebregge vers vous et meymes en nostre vewe le maner de N. oue les appurtenances de quel maner le fraune tenement ore mys en vewe en est parcel et recouerames deuers vous mesmes par verdit de assise et demandoms iugement si assise sur assise deyue estre sanz moustre title de plus tardif tens.

Denom. Gofford et N. soun diuers villes et dyuyses par merches et boundes ou le fraune tenement en N. ne put estre fraune tenement en Gefford et demandoms iugement si de recouerir qe se fit en N. seit assise ore barre dez fraune tenements en Gefford.

Scrop. Nous feymes la vewe et la pleynte del Maner de N. oue lez appurtenances ou vous purriez a teu tens auer abatu nostre bref mes teu tens acceptant [*sic*] la vewe et la pleynte et pledastez a a [*sic*] lassise et perdistez par verdit de assise par qei fut agarde qe nous recouerymes seisine par vewe de Iurours de pus qe nous recouerymes solom nostre pleynte et par la vewe de Iurours mesme le frauntenement dount vous auez ore la pleynte fet com parcel del maner demaundoms iugement si de eeo fraunktenement poez a a [*sic*] lassise atteyndre saunz title etc.

Denom. Le original voleit le frauntenement en N. et chescun iugement et excepcioun ount a referir a lour original et le cesyr de nul homme ne put larger le graunt dez Iustices en countre la fourme de mesme le garauntie et demaundoms iugement si par nul ceser ou par nul excepcioun qe se fit hors del garauntie si del frauntenement de

¹ qe nous auereit, X. ² X adds Et habuit diem in Octabis Sancti hillarii etc. ³ Text of (II) from C.

Scrope denied this.

BEREFORD C.J. If you could show that the plaintiff could have the attaint in respect of the tenements which he is now claiming, he would never get the assize etc.

II.

One Robert Grymbaud brought an assize of novel disseisin against John Hoby and complained of being disseised of his freehold in G.; and his complaint was in respect of two hundred acres of woodland.

Scrope. Before now we brought an assize of novel disseisin against you, before the Justices assigned in the county of Cambridge,¹ and we put in our view the manor of N. and its appurtenances. The freehold now put in view is parcel of that manor, and we recovered it against you by verdict of the assize; and we ask judgment whether you should have assize upon assize without your showing some later title.

Denham. Twyford² and North Witham³ are different vills and are separated by marches and boundaries, so that the freehold in North Witham cannot be a freehold in Twyford; and we ask judgment if a recovery that was gotten in North Witham can now be a bar to an assize in respect of freeholds in Twyford.

Scrope. We put the manor of North Witham with its appurtenances in our view, and we complained in respect of the same. At that time you could have tried to abate our writ, but you accepted at that time the view and the plaint, and pleaded to it to the assize, and you lost by the verdict of the assize, in virtue of which verdict judgment was given that we should recover our seisin in accordance with the view made by the jurors. Since we recovered in accordance with our plaint and by view of the jurors the same freehold, as parcel of the manor, in respect of which you have made your plaint, we ask judgment whether you can get to an assize as to this freehold without showing a title etc.

Denham. The writ original laid the freehold in North Witham, and every judgment and exeption is to be taken to refer to the writ original; and no one's mere acquiescence can give the Justices authority beyond that which they have by virtue of the form of that same authority [*i.e.* the writ original]; and we ask judgment whether by acquiescence on anyone's part or by anything done beyond what was authorized, whereby the Justices went beyond what they had warrant

¹ This is apparently an error for 'Lincoln.' See the Note from the Record on p. 10 below.

² Corrected from the Record.
³ Expansion from the Record.

qui le garauntie dez Iustices se estendy pout nous pus de lassise barrer.

Toud. Si ieo demaunde tenementz en vn hamel et vous en acceptant mon bref demaundez la vewe apres la vewe demaunde encountre vostre acceptacioun ne aueudrez mye a barrer le bref et si ieo recoure pus vers vous par verdit de xij. vous ne recouerez iammes si noun par verdit de atteynte dount de pus qe nous auoms recouery le fraunc tenement ore mys en vostre pleynte par verdit de assise solom nostre pleynte et nostre vewe le quels enceysant vous acceptastes demaundoms iugement si de ces fraunc tenementz deuez a lassise venir.

Denom. Latteynt ne pusse ieo auer qe si ieo portasse latteynt ele ne serreit mye accordant au bref original qe voleit le fraunc tenement en N.

Toud. Si le tenant en assise de nouele disseisine die qe les tenementz mys en vewe et en plainte sont en diuers villes [nent] nome en le original en ceo cas il auera latteynt auxi par de ca de pus qil put auer latteinte ne semble mye qe lassise deit courir.

Malm. La pleynte en assise de nouele disseisine countre vaut vn Precipe quod reddat mes si homme recouerast en vn Precipe quod reddat vn maner oue les appurtenaunces il recouerait touz lez parcells mez qil fussent en diuers villes issint qil ne purra a nule assise atteyndre apres cel recouerer sanz tite moustre auxi de ceste part depus qe la pleynte fut del Maner oue lez appurtenances qe est auxi large com la demaunde en vn Precipe par quele pleynte nous recouerames nentendoms mye qe assise etc.

Denom. Tut recouerastes vous vn Maner oue lez appurtenaunces par plainte en assise de nouele disseisine ceo recouerir ore estendra mye si noun del fraunc tenement nome en le original qe si lez membres del Maner seient en diuers viles le quel maner est a demaunder par assise de nouele disseisine il couent qe touz les villes seient nomez en le original et nepurquant la plainte serra for del Maner qe autrement enseureit qe fraunc tenement en vn ville serret recouery com fraunc tenement en vn autre ville qe serreit inconuenient.

Malm. Homme ad souent vewe qe la ou homme ad recouery fraunc tenement en vne ville qe homme ad recouery comune de Pasture en autre ville et sil fut destorbe en autre ville com appendaunte a mesme le fraunc tenement sanz ceo qe cele ville ou la comune de pasture est seit nome en loriginal auxi de ceste parte.

for doing, we can be afterwards barred from our assize of the freehold.

Toudeby. If I claim tenements in a hamlet, and you, raising no objection to the form of my writ, claim the view, then, after you have claimed the view, you will not be allowed to bar my writ in the face of your acceptance of it. And if afterwards I recover against you by a verdict of the twelve, you will never recover [back again against me] except by the verdict of a jury of attaint. Since, then, we have recovered the freehold which is now laid in your plaint by the verdict of an assize in accordance with our plaint and our view, in which you negligently acquiesced, we ask judgment whether you ought to get an assize in respect of these same freeholds.

Denham. I cannot have a writ of attaint, for if I brought one it would have to be in accordance with the writ original, which laid the freehold in North Witham.

Toudeby. If, in an assize of novel disseisin, the tenant say that the tenements put in the view and in the plaint are in divers villis [not] named in the writ original, he will then be able to have the attaint; so here. Since he can have the attaint, it would seem that the assize ought not to pass.

Malberthorpe. The plaint in an assize of novel disseisin is the equivalent of a *precipe quod reddat*; but if the claimant in a *precipe quod reddat* recover a manor with its appurtenances he will recover all the parcels even though they are in divers villis; and, consequently, the tenant would not, after that recovery, be able to get to any assize [in respect of the same] unless he could show some [fresh] title. So here, since the plaint was of the manor together with the appurtenances, which is as comprehensive as the claim in a *precipe*, and we recovered by such a plaint, we do not think that an assize etc.

Denham. Though you recovered a manor together with the appurtenances by a plaint in an assize of novel disseisin, that recovery will not apply to aught more than the freehold named in the writ original; for if the limbs of a manor that is claimed by an assize of novel disseisin lie in divers villis, then all the villis ought to be named in the writ original, notwithstanding that the plaint is only of the manor itself, otherwise it would follow that a freehold in one vill might be recovered as being a freehold in another vill, which is not to be argued.

Malberthorpe. We have often seen the case when a man by recovering a freehold in one vill hath recovered a common of pasture in another as appendant to the same freehold, when he had been disturbed in the one vill, without the other vill where the common of pasture lay being named in the writ original. So here.

Denom. Nest pas merueille qe vous ne recouerez mye tel profit com vn gros eynz com appendaunt et si vous fussez ostenz de cel profit apres le recouerir vous ne vserez pas la reddisseisine.

III.¹

Nouele Disseisine.

Robert Grimbaud porta vn assise de nouele disseisine vers Iohan le fuitz Gilbert de Hoby et se pleynt estre disseisi dez certainz tenementz en Twyford.

Malm. Assise ne deit estre qe altrefoiz mesme cesti Iohan vers qy etc. porta vne assise de nouele disseisine vers lauauntdit Robert et se pleynt estre disseisi del Maner de Northwyme od les apurtenaunces et mist en sa pleynte et en la vewe des Iurours mesmes les tenementz dount il ore se pleynt estre disseisi par quel assise nous recouerimes par vewe des Iurours et sumes mys en seisine iugement si assise sur assise deyue estre saunz titil moustrer etc.

Den. Nous sumes pleynt dez tenementz en Twyford et le recouerer qe vous alleggez si est des tenementz en Norwyme qe nest pas hamel de Twyford mes est vile a per luy iugement si par tel recouerer Lassise se targer.

Hle. Quant nous recouerimes le Maner de Norwym od les apurtenaunces les tenementz ore demandez si furent apurtenauntz al Maner auauntdit ou nous meymes en pleynte mesmes les tenementz de Twyford a quay vous estustes en pees et pas ne chalengastes et vous adunke de pleyne agreastes ou si vous entendetz qe lassise fist faus serment vostre recouerer vous est salue par lateynt iugement si countre eel reconuerer deuetz al assise auenir.

Scrop. Par lattaynte ne pooms estre eyde qar lassise passa de tenementz en Norwyme et nous sumes pleynt des tenementz en Twyford qest vile et noun pas hamel de Norwyme ou homme ne allegga pas excepcioun de noun tenue en assise etc. pur ceo qe le bref nest altre for qe de libero tenemento suo in tali villa par qey nous demaundoms iugement et prioms Lassise.

Malm. Si ieo demaunde vn Maner od les apurtenaunces quantqe est apurtenaunt ieo recouerey et si vn altre seit tenue de rien [sic] qe seit

¹ Text of (III) from *E*.

Denham. There is nothing remarkable about that, for you could not recover such a profit as a gross in itself, but only as appendant; and if, after the recovery [of it as appendant] you were ejected, you could not use the writ of *redisseisin*.

III.

Novel disseisin.

Robert Grimbaud brought an assize of novel disseisin against John, the son of Gilbert of Huby, and complained that he had been disseised of certain tenements in Twyford.

Malberthorpe. He ought not to have an assize, for at other time this John against whom etc. brought an assize of novel disseisin against the aforesaid Robert, complaining that he had been disseised of the manor of North Witham with the appurtenances; and he put in his plaint and in the view of the jurors these same tenements of which the present plaintiff doth now complain that he hath been disseised; and by that assize we recovered by view of the jurors and we were put in seisin. Judgment whether the plaintiff can have assize upon assize unless he show some [fresh] title etc.

Denham. Our plaint is in respect of tenements in Twyford, while the recovery which you allege was of tenements in North Witham, which is not a hamlet of Twyford but a vill of itself. Judgment whether the assize shall be delayed by such a recovery.

Herle. When we recovered the manor of North Witham together with its appurtenances, the tenements which are now claimed were appurtenant to the aforesaid manor, and we put in our plaint these same tenements at Twyford; and you tacitly accepted what we did and made no objection, and so you fully agreed to it all. If you think that the assize made false oath, then your recovery is given you by a writ of attainr. Judgment whether you ought to get to an assize in the face of that recovery [by us].

Scrope. A writ of attainr would be of no use to us, for the [former] assize passed in respect of tenements in North Witham, while we are complaining of tenements in Twyford, which is a vill and not a hamlet of North Witham; and no exception to the assize on the ground [that the appurtenance was] not holden [within the vill] was made because by the writ the claimant sought recovery merely of his freehold in a certain vill. Therefore we ask judgment and pray the assize.

Malberthorpe. If I claim a manor together with its appurtenances, I shall recover whatever is appurtenant; but in respect of some other

apurtenaunt la excepcioun de noun tenue qest ore la pleynt en assise de nouele disseisine est done en lu de precipe ou nous meimes en nostre pleynte mesme la terre qe ore etc. ou adunke vous rien respoundistes mes come choce apurtenant nous recouerimes par qey nous demaundoms iugement si ore etc.

Scrop. Plus large poer ne doune son ceer qil estut et pas ne respounse a la pleynte qe ne fist bref le Roi mes par le bref nauoit il pas garrauntie daler a lassise des autres tenementz qe de la vile qe fu nome en le bref par qey par son ceer ne poetz dire qe nous sumes oste de ceste assise.

Herle. Si ieo recoure vne carue de terre a qey comune est apendaunt si ieo recoure la terre constat qe ieo auerey la comune tot seit la comune en vne altre vile.

Denum. Nest pas merueille qar si vous recouerez le gros lapendaunt pase od le gros et si vous seetz disseisi de la comune apres vous ne recouerez pas par la reddisseisine.

Herle. Si vous tenetz vn Maner a qey deus Maners ou treis sont apendauntz et ieo porte mon bref vers vous et recoure le chief od les apurtenaunces tot est dereine mes qe chescun seit Maner a par luy.

Berr. Mes en assise de nouele disseisine si ieo syu a recouerer vn maner et il iseient autres tenementz en diuers viles quele pleynte frey ieo ne direi ieo le maner de tel leu et taunt des tenementz en tele vile et taunt en tele vile certes si ferey.

IV.¹

Nouele disseisine.

Robert Grimbaud porta sa assise de nouele disseisine vers Iohan fitz Iohan de Houby et sey pleynt estre disseisi de son fraunk tenement en twiford et mist en sa vewe et en sa pleynt .xviij. acres de boys en meyme la vile.

Herele suit et dit qe il porta vne assise de nouele disseisine altre-

¹ Text of (IV) from *H.*

tenement which is not appurtenant the exception of *nontenure*¹ is now pleadable in an assize of novel disseisin, which is given in place of a *precipe* [*quod reddat*]. But though [in the former assize] we put in our plaint the same land which we are now etc., you took no objection, and we recovered as an appurtenance; and therefore we ask judgment whether you can now etc.²

Scrope. The tenant's acquiescence could not give the plaintiff any greater authority than that which he had by the King's writ, and it is no answer to our [present] plaint; and under the writ the plaintiff had no authority to go to an assize in respect of tenements in any other vill than that named in the writ; and therefore you cannot say that the [present] claimant's acquiescence [in the former assize now] barreth him from this assize.

Herle. If I recover a carucate of land to which a common is appendant, it is clear that, upon recovering the land, I shall have the common, notwithstanding the fact that the common is in another vill.

Denham. It would be strange if you did not: for, when you recover the gross, that which is appendant [to the gross] passeth with the gross; and if afterwards you be disseised of the common you will not have recovery by a writ of redisseisin.³

Herle. If you hold a manor to which two or three manors are appendant, and I bring my writ against you and recover the chief [manor] with its appurtenances, I have established my right to the whole, although each of the manors be a separate one.

BEREFORD C.J. But if I sue by an assize of novel disseisin to recover a manor, and there be other tenements [appendant] in other villis, how shall I make my plaint run? Shall I not complain in respect of the manor of such a place, and of such and such tenements in such and such villis? Certainly I shall do so.

IV.

Novel disseisin.

Robert Grimbaud brought his assize of novel disseisin against John, son of John of Huby, and complained that he had been disseised of his freehold in Twyford; and he put in his view and in his plaint eighteen acres of woodland in the same vill.

Herle defended and said that [the present defendant] at other time brought an assize of novel disseisin against you yourself [the present

¹ The exception of *nient comprise* seems more fitted to the circumstances than that of *noun tenure*.

seemingly corrupt, but the translation probably conveys the sense intended.

² The text is very obscure and

³ Which could only be had of a gross.

foytz vers vous meines du maner de Northwyttton dount les tenementz sur queux la assise est ore porte en sount *parcelle* et recouerames par ceste assise et demaundoms iugement del hure qe nous recouerames altreforz meymes les tenementz par assise sur queux vous auez ore la assise porte si assise deiue sur assise estre.

Denom. Ces sount diuerses assises kar la vne fut de libero tenemento in Northwyttone lautre de libero tenemento en Twford et si ne ad il mie assise sur assise kar eles sunt diuerses.

Herel. La assise est vne kar ne poet estre dedit qe la playnt del entier maner et vewe en fut fete et ne poet estre dedit qe ceo dount la assise est ore porte en est *parcelle* et ne poet estre dedit qe le recouer del entier sei fit par veredit de assise dounke passe la assise sur ceo *parcelle* sur quel la assise est ore porte ergo a prendre cest si curreyt assise sur assise.

Denom. Ne fet mie en tiel cas com en precipe quod reddat le bref serroit bone et la demaunde mesqe ceo fut en quater countez ore est ceo bref vn questus est nobis de libero tenemento en certain vile et nous auoms araine nostre assise en vne altre vile et ne poet estre dit qe le fraunktenement del vne vile poet estre le fraunktenement de vne altre et si senble il qe ils assez sount diuerses qar le garauntiz diuersez.

Herel. La assise fut prise et la pleynt accepte del entier et la vewe et noun pas chalange et sur ceo le recouer et nentendoms pas si ceste assise sait prise coment qe le bref fut porte de libero tenemento et la playnt nient counterplede mes la assise curut qe il ni serra assise sur assise.

Denom. Et nous nentendoms pas del hure qe la assise passa de libero tenemento in Northwythun et cest assise est de libero tenemento en twyford qe sait a prendie assise sur assise qar a prendre assise sur assise ceo serroyt en meyme la vile qe deuaunt demaundoms iugement del hure qe ceo nest pas issint et prioms lassise.

Herel. Si ieo portase mon precipe quod reddat et demaundase vn

plaintiff] in respect of the manor of North Witham, of which the tenements in respect of which the present assize is brought are parcel ; and we recovered by that assize ; and seeing that at other time we recovered by assize these same tenements for the recovery of which you have now brought an assize, [we ask judgment] whether assize ought to be taken upon assize.

Denham. These are different assizes ; for the one was of a freehold in North Witham, while the other is of a freehold in Twyford ; and so there is no assize upon assize, for they be different.

Herle. It is all one assize, for it cannot be denied that the plaint was in respect of the whole manor and that view thereof was made ; neither can it be denied that that in respect of which the assize is now brought, is parcel thereof ; and it cannot be denied that recovery of the whole was given by the verdict of the assize. The assize, consequently, passed in respect of this same parcel in respect of which the assize is now brought. Therefore, if this assize be taken, assize upon assize will follow.

Denham. It is not the same in this case as it would be in a *precipe quod reddat*. There the writ and the claim would be good, even though the tenements lay in four counties. Now that [former] writ recited that a certain person hath complained to us [*sc.* to the King] in respect of a freehold in a certain vill¹ ; and we have [now] brought our writ of a freehold in another vill, and it cannot be maintained that a freehold in one vill can be a freehold in another vill ; and so it seemeth that [the assizes] are different ones, for [the writs] authorize different [enquiries].

Herle. The [former] assize was taken and the plaint accepted and the view made in respect of the whole [of the manor and its appurtenances], and no objection was made, and upon that the recovery was gotten ; and we do not understand how this assize, if it be taken, will not be assize upon assize, seeing that the writ [in the former assize] was brought of a freehold and the plaint was not counterpleaded, and the assize passed.

Denham. Neither do we understand how, since the [former] assize passed in respect of a freehold in North Witham and this assize is in respect of a freehold in Twyford, this can be assize upon assize ; for to take assize upon assize the freehold must be in the same vill as in the former assize : and since this is not so, we ask judgment and pray the assize.

Herle. If I should bring my *precipe quod reddat* and claim a manor

¹ The writ of novel disseisin began : *Questus est nobis*.

maner od les apurtenaunces chescun apendant pursuerait le maner et si aueroit il terre qe serroit de vn altre counte recoueri [*sic*] par mie le bref qe vnt en le counte ou la maner est si est il en ceo cas le bref est porte de libero tenemento en Northwythun la plaint du maner de Northwythun od les apurtenances ore ne poet estre dedit qe ceo dount lassise est ore porte nest parcelle.

¹*Denom.* La ou vous ditez qe si vn precipe fett [*sic*] du maner le apurtenaunt pursuerait le maner en vne assise ne auerez mie de libero tenemento cum pertinenciis qar si vous le ussez si serrez vous serui et si ni ad il mie seumblaunte.

Et de autre parte nous nauez altre chose pur vous pur mayntener le erreur en la primer assise mes pur ceo qe la playnt fut accepte et pur ceo semble il a nous qe le recouerer sei fit bien par la primer assise.

[*Denom.*] La plaint fut du maner le bref fut de libero tenemento qe ne sei estendit plus auaunt qe la vile ou la assise fut porte dount le recouerer qe sei fit en taunt qe il passa la garauntie fut erroyne pur ceo qe la garauntie ne sey estendit plus auaunt qe Northwythun et le bref qy nous portoms fut des tenements en twyford et issi les garauntez diuerses et les recouerirs ne sei deiuent faire de dreit mes sulom les garauntiz diuerses ergo la excepcioun de prise de assise ne batera en ceo cas.²

Herel. Si error isait en taunt qe la assise passa des altres tenements qe ils naueynt garauntie si auez vostre attaynte.

Scrop. En ceo cas ne auerez mie attaynt en taunt qe il fuerunt chargez ils pursuerunt mes en taunt qe la charge sei fit plus auaunt qe fut garauntie si ne eurt [*sic*] il mie en manere de assise mes en errour et ceo ne barre mie a prendre cest assise car le recouerer en lautre assise

¹⁻² The whole of this appears in the MS. as a single speech by Denham. It cannot be the speech of any one counsel, as it advocates, in turn, both sides of the question. It seems really to consist of two speeches by Denham, with one from the other side between them and has been dealt with as such in the translation on the opposite page.

together with the appurtenances, everything appendant¹ would follow the manor; and if there were land lying in another county I should recover that by the writ brought in the county where the manor was.² So in the present case. The [former] writ was brought of a freehold in North Witham, the plaint was in respect of the manor of North Witham and its appurtenances, and it cannot be denied that that in respect of which the present assize is brought is a parcel of that manor.

³*Denham.* You say that if a *precipe* be brought of a manor the appurtenances would follow the manor; but in [the writ for] an assize you do not get the words *de libero tenemento cum pertinenciis*.⁴ If you did, you might avail yourself of them; but, as it is, there is no similarity [between a *precipe* and an assize].

The other side. You have nothing in support of your argument that the former assize was in error; and so it seemeth to us that the recovery was properly gotten by the former assize because the complaint was accepted [without any objection being made to it].

[*Denham.*] The complaint was in respect of the manor; the writ was in respect of a freehold, the limits of which cannot be held to extend beyond the vill laid in the writ. The recovery, then, that was awarded was in error, for it went beyond what there was authority to award; for there was no authority to award aught outside North Witham. Now the writ which we now bring is in respect of tenements in Twyford, and so the authority [for an award] is different from that [under the former writ]; and a recovery cannot rightfully be awarded except in accordance with the authority [given in the writ]. But here there is a different authority, therefore the exception taken to the passing of the assize will not abate the writ in the present circumstances.⁵

Herle. If so it be that error occurred by the fact that the assize passed in respect of tenements beyond the authority [of the writ] then you can have your attainat.

Serape. Attainat doth not lie in the present circumstances, because [the jury of the assize] were charged that [the appurtenances] followed [the manor]; and, because the charge went beyond what there was authority for, the assize did not follow its rightful course but was in error, and consequently doth not act in bar of the present assize, for the recovery in the other assize was made in error; and the exception

¹ Either the scribe has by a slip written *apendant* where he should have written *appurtenant*, or he thought that the words were synonymous.

² The translation cannot be quite exact here, as the text is confused.

³⁻⁵ See the text and the footnote thereon.

⁴ The writ is for the recovery of the freehold only. Nothing is said therein of appurtenances.

fut sur erreur et la ou la excepcioun tent leu la primer assise est prise en due manere et par bon garauntie.

Malb. Si ieo moy pleins de vn maner dount le gros fut en vne vile et il ifut commune apendaunte en vne altre vile il recouerait la commune en lautre vile par la assise et si de cest commune autrefoitz fut de force il recoueroit par reddeseisine.

Scrop. Vous ditez talent qar si lassise passe sur la grosse cest a dire sur le fraunktenement la reddiseisine ne passera iames sur la commune ne sur estouers unkore et ceo est la resoun pur ceo qe la reddiseisine passera touz iours del principal qe fut recoueri en la primer assise et nient sur altre chose et auxi est de attaynt qe ne en ceo cas nauera pas lattaint com auant est dit.

Et pus demanderunt les iustices si ceo fut hamele du maner ou maner.

Herle. A ceo nauoms mestre a respoundre com auant.

Et fut chace a dire et dit hamele et si troue seit qe vile qe nul tort ne nule disseisine et fut remaunde en counte a prendre assise.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 89, Lincolnshire.

Assisa alias apud Graham coram Henrico Le Scrope et Rogero de Culbilyk Iusticiariis domini Regis ad assisam illam in comitatu Lincolnie capiendam assignatis die veneris proxima ante festum Sancte Marie Magdalene anno regni Regis Edwardi filii Regis Edwardi octauo venit recognitura si Iohannes filius Gilberti de Houby Alexander de Wakerle Nicholaus de Coldeouertone Thomas de Wentone et Robertus de Chynouere iniuste etc. disseisiuerunt Robertum Grymbaud de libero tenemento suo in Twyford post primum etc. Et vnde questus fuit quod disseisiuerunt eum de centum et quadraginta acris bosci cum pertinenciis etc.

Et Iohannes et omnes alii excepto Nicholao de Coldeouertone et Thoma de Wentone tunc venerunt et quidam Iohannes de Kirkeby respondit pro predictis Nicholao et Thoma tanquam eorum balliuis et tam idem balliuis quam predicti Alexander et Robertus de Chynouere dixerunt quod ipsi nullam inde fecerunt iniuriam seu disseisinam Et de hoc posuerunt se super assisam etc. Et predictus Iohannes filius Gilberti respondit vt tenens Et dixit quod assisa inde inter eos fieri non debuit Dixit enim quod ipse alias apud sanctum Botolphum coram Lamberto de Trykyngham et Iohanne de Cheynel Iusticiariis ad assisas in comitatu predicto capiendas assignatis in Crastino Sancte Marie Magdalene proximo preterito arramiauuit quandam

[of assize upon assize] can be taken only when the first assize was taken in due manner and by sufficient authority.

Malberthorpe. If my plaint be of a manor of which the gross be in one vill and a common appendant to it be in another vill, I shall recover the common that lieth in the other vill by the assize; and if afterwards I be deforced of this common I shall recover it by a writ of redisseisin.

Scrope. You are talking at random, for if the assize pass upon the principal, that is, upon the freehold, a writ of redisseisin will not lie for the common nor for estovers either; and the reason of this is that a writ of redisseisin will always lie in respect of the principal that was recovered under the first assize, but not of aught else. And it is likewise with attaint, so that attaint lieth not in the present circumstances, as we have said before.

And on a later day the Justices asked whether [Twyford] was a hamlet of the manor or a manor [in itself].

Herle. It is not incumbent upon us to answer that—*ut supra*.

But he was made to answer; and he said that it was a hamlet; but that, even if it should be found to be a vill, there had been no wrong or disseisin done; and the parties were sent back to the county¹ to take the assize.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 89, Lincolnshire.

An assize came at other time, on the Friday next before the Feast of St. Mary Magdalene in the eighth year of King Edward the son of King Edward, to Grantham before Harry the Scrope and Roger of Culbildik, Justices of the lord King assigned to take that assize in the county of Lincoln, to make recognition whether John, son of Gilbert of Huby, Alexander of Wakerley, Nicholas of Coldoverton, Thomas of Wenton and Robert of Chinnor unjustly etc. disseised Robert Grimbaud of his freehold in Twyford after the first etc., in respect whereof he, Robert, complained that they had disseised him of a hundred and forty acres of woodland, together with the appurtenances etc.

And John and all the others save Nicholas of Coldoverton and Thomas of Wenton came then, and a certain John of Kirkby answered for the aforesaid Nicholas and Thomas as their bailiff; and both the same bailiff and the aforesaid Alexander and Robert of Chinnor said that they had done no wrong or disseisin thereof; and of this they put themselves on the assize etc. And the aforesaid John, son of Gilbert, answered as tenant; and he said that assize thereof ought not to pass between them; for he said that he himself at other time, at Boston, before Lambert of Trikingham and John of Cheynel, Justices assigned to take assizes in the aforesaid county, on the Morrow of St. Mary Magdalene last past, had arrayed a certain assize of novel disseisin

¹ Not to the county court, but to the Justices of Assize sitting within the county.

Note from the Record—continued.

assiam noue disseisine uersus predictum Robertum de libero tenemento suo in Northwythine et posuit in visu etc. manerium de Northwythine cum pertinenciis et deciam boscum predictum qui est parcella eiusdem manerii per cuius assise veredictum idem Iohannes recuperauit seisinam suam de eodem manerio cum pertinenciis et dixit quod vicecomes per visum recognitorum etc. liberauit ei seisinam de predicto bosco tanquam de pertinencione predicti manerii unde nunc est seisitus per iudicium predictum Et petit iudicium si assisa super assiam inde procedere deberet etc.

Et Robertus dixit quod pro hoc assisa ista retardari non debuit Quia dixit quod boscus unde questus fuit tunc disseisiri est in predicta villa de Twyford que est villa per certas metas et bundas separata a predicta villa de Northwythine Dixit etiam quod predictus boscus quondam fuit in seisina cuiusdam Willelmi de Kirkeby qui inde obiit seisitus in dominico suo ut de feodo post cuius mortem tam boscus ille quam alia tenementa sua descenderunt quibusdam Margarete Alicie Matilde et Mabilie sororibus et heredibus eiusdem Willelmi Ita quod predictus boscus cum pertinenciis assignatus fuit parti ipsius Mabilie matris ipsius Roberti cuius heres ipse est que quidem Mabilia obiit inde seisata in dominico suo ut de feodo post cuius mortem idem Robertus ut filius eius et heres intrauit in bosco illo et inde fuit in seisina ut de libero tenemento suo quousque predicti Iohannes et alii ipsum inde iniuste disseisiuerunt et hoc petit quod inquiretur per assiam etc.

Et Iohannes quesitus per Iusticiarios an Twyford sit villa per se vel hamellettus predictae ville de Northwythine nichil ad hoc respondit nisi tantum quod siue fuerit villa siue hamellettus ex quo predictus boscus est de pertinenciis predicti manerii et recognitoribus prioris assise in visu positus et etiam per visum eorundem seisina inde sibi liberata sicut predictum est non videtur ei quod capcioni istius assise super assiam in casu isto sit procedendum etc.

Dies datus fuit partibus hic die Mercurii proxima post quindenam Sancti Michaelis in eodem [statu] quo nunc. Et breue originale cum recordo hic mittitur etc. Et modo venit predictus Robertus et similiter predictus Iohannes filius Gilberti et alii per balliuum etc. Et datus est eis dies de audiendo Iudicio suo hic in octabis Sancti Hillarii etc. Ad quem diem veniunt partes predictae Et predictus Robertus petit quod procedatur ad assiam etc. maxime cum Twyford sit villa per se et non hamellettus predictae ville de Northwythine nec Iusticiarii ad assiam de libero tenemento in Northwythine supradictam capiendam assignati aliud placitum tenuerunt sicut [sic] nec debuerunt nisi de libero tenemento in eadem villa in breui nominata ex quo per breue Regis warrantiam non habuerunt Dicit etiam quod per aliquam liberationem seisine factam per visum recognitorum extra

Note from the Record—continued.

against the aforesaid Robert in respect of his freehold in North Witham and placed in view etc. the manor of North Witham together with the appurtenances, and also the aforesaid woodland, which is parcel of the same manor; by the verdict of which assize the same John did recover his seisin of the same manor and its appurtenances; and he said that the Sheriff, by view of the recognitors, did deliver him seisin of the aforesaid woodland as of an appurtenance of the aforesaid manor, of which he is now seised by the aforesaid judgment. And he asked judgment whether assize upon assize thereof ought to pass etc.

And Robert said that this assize ought not to be delayed for that reason; for he said that the woodland of which [John, son of Gilbert] then complained that he had been disseised is in the aforesaid vill of Twyford, which is a vill separated by certain metes and bounds from the aforesaid vill of North Witham. He said further that the aforesaid woodland was aforetime in the seisin of a certain William of Kirkby, who died seised thereof in his demesne as of fee; and that upon his death both that woodland and other tenements of his descended to a certain Margaret, Alice, Maud and Mabel, sisters and heirs of the same William; the aforesaid woodland, together with the appurtenances, being assigned to the share of the said Mabel, mother of this same Robert, whose heir Robert is. The said Mabel died seised thereof in her demesne as of fee; and upon her death this same Robert entered, as her son and heir, upon that woodland, and was in seisin thereof as of his freehold until the aforesaid John and the others did unjustly disseise him thereof; and he asked that this may be inquired of by assize etc.

And John, being asked by the Justices whether Twyford was a vill by itself or a hamlet of the aforesaid vill of North Witham, answered naught as to this save only that, whether it be a vill or a hamlet, it doth not seem to him that the taking of this assize upon assize in these circumstances, namely, that the aforesaid woodland is an appurtenance of the aforesaid manor and was put in the view of the recognitors of the former assize, and also that seisin was delivered to him upon the view of the same, as is aforesaid, ought to be proceeded with etc.

A day was given to the parties here on the Wednesday next after the quindene of St. Michael in the same state as now. And the writ original and the record are sent here etc. And now cometh the aforesaid Robert and likewise the aforesaid John, son of Gilbert, and the others by bailiff etc. And a day is given them to hear their judgment here in the octaves of St. Hilary etc. upon which day the aforesaid parties do come; and the aforesaid Robert asketh that the assize may be proceeded with etc., especially as Twyford is a vill by itself and not a hamlet of the aforesaid vill of North Witham, and as the Justices assigned to take the aforesaid assize of a freehold in North Witham did not therefore hold and ought not [to have held] any other plea than of a freehold in the same vill as was named in the writ, for they had no warrant by the King's writ so to do. He saith further that in the circumstances he ought not to be prejudiced by any delivery of seisin made by

Note from the Record—continued.

warantiam etc. ligari non debuit in hac parte cum sint ville diuerse et hiis rationibus et aliis rationibus suis supradictis vna cum hoc quod dicit quod non potest vti attainta nec certificacione in casu isto petit vt prius quod procedatur ad assisam Et super hoc quesitum est a prefato Iohanne per Iusticiarios si Twyford sit villa per se vel hamelettus etc. Dicit quod est hamelettus de Nortwychine et non villa per se Et si compertum sit quod sit villa etc. dicit quod ipse nullam fecit iniuriam etc. Et de hoc ponit se super assisam etc. Et Robertus similiter Ideo capiatur assisa coram prefatis Iusticiariis assignatis in comitatu predicto Et recordum vna cum breui originali eis remittatur etc. per predictum Robertum ad assisam illam capiendam etc.

2. BUCKTON v. THE BISHOP OF BATH AND WELLS.¹1.²

Quare impedit⁷ ou le defendant dit qe a lui apent a presenter pur ceo qe le pere le pleintif tint de luy et morust etc. et celui qe ore se pleint deinz age et duraunt soun nounage il presenta par resoun de vne priuacioun le pleintif dit qe la Eglise se voida quant il fust de plein age prest etc. et alii e contra.

Vn A. porta son quare Impedit vers Iohan leuesque de Bathe et dit qe attort etc. qe son pere feust seisi du maner de C. a qei etc. qe presenta³ vn R⁴ etc. ⁵vn son clerc⁶ par qi resignement la eglise est ore voida et issi etc.

Toud. Bien est verite qe son pere fut seisi du maner a qei etc. mes il tint mesme le maner de nous par seruise de chiualer et morust etc. ⁷apres qi mort cesti A. fut⁸ dedeinz age par quay nous seysimes le maner etc. par resoun de garde et vous dioms qe duraunt seon nounage et le maner en nostre mayn esteaunt lesglise se voida par priuacioun mesme celui R. et issi appent a nous presenter.

Scrop. ⁹Depuis ceo qe vous auez conu lauowesoun estre appendaunt au maner¹⁰ vous dioms qe qaunt nous fumes de pleyn age et leuesqe nous auoit rendu le maner et resceu nostre fealte si fust lesglise pleine et longe temps apres de mesme celui R. prest etc.

Migg. Qe lesglise se voida taunqe ¹¹le maner¹² feust en nostre mayn par resoun de vostre nounage prest etc.

¹ Reported by B, H, and X. Z has a short note. Names of the parties from the Record. ² Text of (1) from B collated with X. The headnote in X is: Quare impedit ou le gardeyn clama vers le heir de plein age pur ceo qe la eglise se voida a taunt com il fut denz age. ³⁻⁴ Added from X. ⁵⁻⁶ X omits. ⁷⁻⁸ cesti A., X. ⁹⁻¹⁰ La ou vous dites qe vous etc. com appartenant au maner nous, X. ¹¹⁻¹² cle, X.

Note from the Record—continued.

view of the recognitors beyond what was warranted etc., as the vills are different ones; and for these reasons and his other reasons stated above, together with this that he saith that he cannot have the attainr or certification in the present circumstances, he asketh as before that the assize may proceed. And hereupon the aforesaid John is asked by the Justices whether Twyford is a vill of itself or a hamlet etc., and he saith that it is a hamlet of North Witham and not a vill of itself; but, if it be found that it is a vill, he saith that he hath done no wrong etc. And of this he putteth himself on the assize etc. And Robert doth the like. So the assize is to be taken before the aforesaid Justices assigned in the aforesaid county. And the record together with the writ original for taking that assize is to be sent etc. to them by the aforesaid Robert etc.

2. BUCKTON v. THE BISHOP OF BATH AND WELLS.¹

I.

Quare impedit where the defendant said that the right to present belonged to him because the plaintiff's father held of him and died etc. while the present plaintiff was under age; and that during the plaintiff's nonage he presented by reason of a deprivation. The plaintiff said that the church became void when he was of full age, and that he was ready to aver this. Issue was joined upon this plea.

One A. brought his *quare impedit* against John, Bishop of Bath, and said that wrongfully etc., for his father was seised of the manor of C., to which etc., and presented one R., his clerk etc., by whose resignation the church is now void, and so etc.

Toudeby. True it is that the plaintiff's father was seised of the manor to which etc.; but he held that same manor of us by knight's service, and he died etc. Upon his death, this A. being within age, we seized the manor etc. in right of our wardship; and we tell you that during the plaintiff's nonage, and while the manor remained in our hand, the church became void through the deprivation of that same R.; and so it belongeth to us to present.

Scrope. Since you have admitted that the advowson is appendant to the manor, we now tell you that the church was filled by that same R. when we became of full age and after the Bishop had restored the manor to us and had received our fealty and for long afterwards; ready etc.

Miggeley. Ready etc. that the church became void while the manor remained in our hand by reason of your nonage.

¹ See the Introduction, p. xxv above.

Ber. Nous nenquererons ia si lesglise¹ feust voide du dreit ou ne mye mes si ele feut voide etc. de fait taunqe le maner etc. ou plein come² il dient.

Et stetit verificacio. Et fuit mirum quod non mandassent episcopo etc. quia vtriusque vacacionis causa hic allegata spectat ad forum ecclesiasticum scilicet resignacio et priuacio.

II.³

Quare impedit.

Vn A. porta le quare impedit vers le euesqe de Bardewelle et dit qe atort ly desturbe etc.

Denom. Apent al euesqe a presenter par la resoun qe le maner de T. a quel la auoweson est apendaunte esteyt en sa garde par resoun del nounage meyme cesti A. a quel temps la eglise sey voyda par le resignement B. iugement etc.

Aldeborn. Qe la eglise sey voda duraunt nostre nounage ne purrez vous dire qar il nous auelyt a ceu temps rendu nostre terre et il siesi de nostre fraunktenement issi qe a temps qe la eglise sey voyda nous fumes seisi du maner etc. et demaundoms iugement.

Scrop. Nous voloms auerer qe la eglise sey voyda de dreyt taunke nous fumes seisi etc.

Berr. Nous nenquiroms ia si ceo uoyda de dreyt ou ne mie qar nostre ley ne soeffre poynt.

Aldeb. Qe la eglise fut pleyn de B. longe tens apres ceo qe vous nous auiez rendu nostre terre prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 48, Somerset.

Iohannes Bathonensis et Wellensis Episcopus summonitus fuit ad respondendum Iohanni filio Iohannis de Buctone de placito quod permittat ipsum presentare idoneam personam ad ecclesiam Cherlecombe que vacat et ad suam spectat donacionem etc. Et vnde idem Iohannes filius Iohannis per attornatum suum dicit quod predictus Iohannes de Buctone pater ipsius Iohannis fuit seisitus de manerio de Cherlecombe ad quod aduocacio predicte ecclesie pertinet qui ad eandem ecclesiam presentauit quendam Ricardum de Bauent clericum suum qui ad presentationem suam fuit admissus et institutus tempore pacis tempore Edwardi Regis patris domini Regis nunc etc. per cuius

¹ ele, X

² auxi com, X.

³ Text of (II) from H.

BEREFORD C.J. We shall not inquire whether the church was legally void or not, but whether it was actually void etc. or full, as the plaintiff saith, while the manor etc.

And the averment stood. And it was a strange thing that they did not send to the Bishop etc. because either cause of the vacancy herein alleged, to wit, resignation or deprivation, cometh within ecclesiastical jurisdiction.

II.

Quare impedit.

One A. brought the *quare impedit* against the Bishop of Bath and Wells; and he said that he wrongfully disturbeth him etc.

Denham. The Bishop is entitled to present because the manor of T. to which the advowson is appendant was in his wardship, by reason of the nonage of this same A., at the time when the church became vacant through the resignation of B. Judgment etc.

Aldborough. You cannot say that the church became vacant during our nonage, for at that time [*i.e.* when the church became vacant] the Bishop had restored our land to us, and A. was seised of our freehold; so that at the time when the church became vacant we were seised of the manor etc., and we ask judgment.

Serape. We will aver that the church became rightfully vacant while we were seised etc.

BEREFORD C.J. We shall not inquire whether the church was vacant rightfully or not, for our law doth not permit us.¹

Aldborough. Ready etc. that the church was filled by B. a long time after that you had restored our land to us.

And issue was joined.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 48, Somerset.

John, Bishop of Bath and Wells, was summoned to answer John, son of John of Buckton, of a plea that he permit him to present a fit person to the church of Charlecombe which is void and is in his gift etc. And thereof the same John, son of John, by his attorney saith that the aforesaid John of Buckton, father of John the plaintiff, was seised of the manor of Charlecombe, to which the advowson of the aforesaid church is appurtenant; and he presented to the same church a certain Richard of Bavent. his clerk, who upon his presentation was admitted and instituted in time of peace, in the time of King Edward, father of the lord King that now is etc., by whose

¹ Meaning that it was not a matter in which the lay court had jurisdiction.

Note from the Record—continued.

pruaciouem predicta ecclesia modo vacat etc. Et de ipso Iohanne descendit Ius presentandi etc. racione manerii predicti isti Iohanni qui nunc etc. vt filio etc. Et ea racione quod Idem Iohannes filius Iohannis seisitus est de predicto manerio ad quod etc. ad ipsum Iohannem pertinet ad predictam ecclesiam presentare predictus Episcopus ipsum iniuste impedit etc. presentare vnde dicit quod deterioratus est et dampnum habet ad valenciam ducentarum librarum Et inde producit sectam etc.

Et Episcopus per attornatum suum venit Et defendit vium et iniuriam quando etc. Et bene concedit quod predictus Iohannes pater etc. fuit seisitus de predicto manerio cum pertinenciis ad quod aduocacio predictae ecclesie pertinet et ad eandem ecclesiam presentauit predictum Ricardum de Bauent clericum suum etc. Qui quidem Iohannes manerium illud tenuit de ipso Episcopo vt de ecclesia sua Bathonensi et Wellensi per seruicium militare et obiit in homagio suo post cuius mortem Idem Manerium cum pertinenciis simul cum aduocacione etc. deuenit in seisinam eiusdem Episcopi Capitalis domini etc. nomine custodie racione minoris etatis predicti Iohannis filii Iohannis etc. et dicit quod durante custodia predicta et in manu sua existente vacauit predicta ecclesia per resignacionem ipsius Ricardi etc. Et ita ad ipsum Episcopum custodem etc. pertinet predictam ecclesiam conferre et non ad predictum Iohannem filium Iohannis ad eandem presentare etc.

Et Iohannes dicit reuera quod predictus Episcopus nomine custodie fuit seisitus de predicto manerio ad quod predicta aduocacio pertinet racione minoris etatis ipsius Iohannis vt predictum est set bene dicit quod postquam predictus Episcopus reddiderat ipsi Iohanni predictum manerium tanquam plene etatis etc. et idem Iohannes fuit inde in seisina per reddicionem predictam vt de hereditate sua per liberacionem ipsius Episcopi predictus Ricardus de Bauent tenuit predictam ecclesiam tanquam persona impersonata Et de hoc pretendit verificare etc.

Et Episcopus dicit vt prius quod predicta ecclesia vacauit tempore quo predictum manerium ad quod aduocacio predicta pertinet fuit in seisina eiusdem Episcopi nomine custodie sicut predictum est Ita quod predictus Ricardus de Bauent quando idem manerium deuenit in seisinam predicti Iohannis filii Iohannis per reddicionem eiusdem Episcopi non tenuit predictam ecclesiam tanquam persona etc. sicut Idem Iohannes filius Iohannis dicit Et de hoc ponit se super patriam Et Iohannes filius Iohannis similiter Ideo preceptum est vicecomiti quod venire faciat hic in octabis Sancti Martini xij. etc. per quos etc. Et qui nec etc. Quia tam etc.

Note from the Record—continued.

deprivation the aforesaid church is now void etc. And from that John the right of presenting etc. descended, in right of the aforesaid manor, to this John that now etc., as son etc. And because the same John, son of John, was seised of the aforesaid manor to which etc., it belongeth to this same John to present to the aforesaid church. The aforesaid Bishop unjustly preventeth him etc. from presenting, and he saith that he is injured thereby and hath damage to the amount of two hundred pounds. And he produceth suit etc. thereof.

And the Bishop cometh by his attorney and denieth force and injury when etc. And he doth fully admit that the aforesaid John, father etc., was seised of the aforesaid manor, together with the appurtenances, to which the advowson of the aforesaid church is appurtenant, and that he did present to the same church the aforesaid Richard of Bavent, his clerk etc. The said John held that manor of this same Bishop as of his church of Bath and Wells by knight's service, and he died in the homage of the Bishop; and upon his death that same manor and the appurtenances, together with the advowson etc., passed into the seisin of this same Bishop, chief lord etc., in right of his wardship accruing by reason of the aforesaid John, son of John etc., being within age; and he saith that while the aforesaid wardship was continuing and while it remained in himself, the aforesaid church became void through the resignation of the said Richard etc.; and so it belongeth to this same Bishop, as guardian etc., to collate the aforesaid church, and not to the aforesaid John, son of John, to present to the same etc.

And John saith that in truth the aforesaid Bishop was seised as guardian of the aforesaid manor to which the aforesaid advowson is appurtenant, by reason of this same John being within full age, as is aforesaid; but he saith further that after that the aforesaid Bishop had surrendered to him, John, as having attained full age etc., the aforesaid manor, and while this same John was in seisin thereof, by virtue of the aforesaid surrender, as of his inheritance, by the livery of the said Bishop, the aforesaid Richard of Bavent [still] held the aforesaid church as parson imparsonnee. And he offereth to aver this etc.

And the Bishop saith as before that the aforesaid church became void during the time when the aforesaid manor to which the aforesaid advowson is appurtenant was in the seisin of the same Bishop by reason of his wardship, as is aforesaid, so that when the same manor passed into the seisin of the aforesaid John, son of John, through the surrender thereof by this same Bishop, the aforesaid Richard of Bavent did not hold the aforesaid church as parson etc. as that same John, son of John, doth say. And of this he doth put himself upon the country. And John, son of John, doth the like. So the Sheriff is ordered to make come here on the octaves of St. Martin twelve etc. through whom etc., and who are neither etc., because both etc.

3. LESTRANGE v. OAKOVER.¹I.²

Quid iuris clamat porte vers .ij. et lor femmes ou lun et sa femme auoient rendu lor estat a lautre et a sa femme et pur ceo qe ceux qe rendirunt nauoient nul estat le bref sabati.

Vn A. granta la reuersion des tenementz qe vn B. et constaunce³ sa Femme William⁴ de Lekenore⁵ et Margerie sa Femme tindrent a terme de la vie Constaunce et⁶ Symon lestraunge Symon siwy le quid iuris clamat vers B. et Constaunce et W. et Margerie.

*Wilby*⁷ pur W. et M. Nous sumes venu⁸ en court cum tenant ioint od B. et C. qe ne venunt⁹ pas par quey nentendoms mye qe santz eux deuoms¹⁰ conustre.

Scrop. Pledetz pur vous mesmes.

Berr. Vous estes en court deliuezerez vous si vous voletz.

Toud. Nous clamoms fee etc. come du dreit Margerie.

Scrop. Qil ne tendrent mes¹¹ a terme de la vie Constance vt supra prest etc.

Berr. Il sunt en court et pledunt¹² pur lenter¹³ et clayment fee coment poetz vous attacher tenaunce en la persone Constance quasi diceret nullo modo.

Scrop. Constance tenia¹¹ ceux tenementz a terme de vie et rendi seon estat¹⁵ a W. et M. et issint tindrent¹⁶ il vt supra.

Berr. ¹⁷Pur ceo¹⁸ qe Constance nauoit riens etc. le iour etc. aillent William et Margerie a dieux.

Et nota qe en mesme la fyn si furent les deux parties dun maner des queux il demanderent la reuersion de la terce partie etc. vt supra renduz *Scrop* se pria qe la fyn poit engrosser de les deux parties et sic fecit.

II.¹⁹

Quid iuris.

Ion lestraunge porta le quid iuris clamat vers Roger le fiz Iordan pulisden et constaunce sa femme lourance de Acouere et Margerie sa femme.

¹ Reported by B, H, M, and X. Names of the parties from the Record.

² Text of (I) from B collated with M and X.

³ X has Eustace all through.

⁴ From M and X; B has ville.

⁵ Cokenore, M; Rokenhale, X.

⁶ a, M, X.

⁷ Will. Herler, Toud., M; X had originally Hlc. followed by some other name which looks like Toud. This has been erased.

⁸ fet venir, M, X.

⁹ de vous, X.

¹⁰ ouesqe, M; qe, X.

¹¹⁻¹³ X omits.

¹⁴ tient, M; X omits.

¹⁵ M and X add par fait.

¹⁶ vindrent, X.

¹⁷⁻¹⁸ de puis, M, X.

¹⁹ Text of (II) from H.

3. LESTRANGE v. OAKOVER.¹

I.

A writ of *quid iuris clamat* was brought against two persons and their wives. One of the defendants and his wife had surrendered their estate to the other defendant and his wife. The writ was abated because they who surrendered had now no estate.

One A. granted the reversion of tenements which one B. and Constance, his wife, and William of Oakover and Margery, his wife, held for the term of Constance's life ; and Simon Lestrangle sued the *quid iuris clamat* against B. and Constance and William and Margery.

Willoughby for William and Margery. We have come into Court as joint-tenants with B. and Constance, who have not come ; and therefore we do not think that we ought to make any recognition without them.

Scrope. Plead for yourselves.

BEREFORD C.J. You are in Court. Deliver yourselves if you want to do so.

Toudeby. We claim fee etc. as of Margery's right.

Scrope. Ready etc. that they hold only for the term of Constance's life *ut supra*.

BEREFORD C.J. They are in Court and are pleading for the whole [estate] and they claim the fee. How are you going to attach tenancy in the person of Constance ?—*implying that he could not do so in any way*.

Scrope. Constance held these tenements for the term of her life and surrendered her estate to William and Margery, and so these hold *ut supra*.

BEREFORD C.J. Because Constance had naught etc. on the day etc. let William and Margery go away.

And note that by the same fine two parts of a manor of which they claimed the reversion of a third part were surrendered. *Scrope* prayed that the fine might be engrossed of the two parts [? only], and that was done.

II.

Quid iuris.

John Lestraunge brought the *quid iuris clamat* against Roger the son of Jordan [of] Palisdon and Constance, his wife, Lawrence of Oakover and Margery, his wife.

¹ See the Introduction, p. xxvi, above.

Will. Vous auez cy Lourance de Acouere et Margerie sa femme qe diunt qe il ne deyuunt mie construer la manere de la tenaunce saunz ceo qe les autres ne fussent en court qy sount nomez en le bref.

Berr. Si vous volez construer pur uostre auantage conussez qar la court ne chacera poynt.

Will. Lourance et Margerie cleyment fee en ceux tenementz com del dreyt Margerie.

Scrop. Ceo ne pount il dire qe nous voloms auer qyl nauoynt qe terme de vie le iour de la conusaunce fete.

Herle. Moustrez coment forsque a terme de vie.

Scrop. Moustrez vous ceo qar ceo apent a uous a fere.

Berr. A uous qe clamez estate par mie vostre conuser est a moustrer et descloer quel estate vostre conussour auoyt et coment ceux des queux uous clamez atournement sunt auenuz a ceux tenementz des queux vous byez auer reuersion.

Et issi fut il chace par la court a construer etc.

Denom. Nous vous dioms qe vn costaunce lessa ceux tenementz a Lourance et Margerie a terme de la vie costaunce et issi ne vnt il estate si noun a terme de la vie constaunce qe ceux tenementz tynt en noun de dower et de tiel estate sount il seisi et ceo voloms nous auer si la court le soefre.

Herle. Iugement de la fyne qar en clarifiaunt nostre estate vnt il dit qe constaunce ceux tenementz tynt en noun de dower et en la fyne ne vnt il la nome forsque tenir a terme de vie iugement.

Et la fyne sey abatyst.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 88, Staffordshire.

Preceptum fuit vicecomiti quod venire faceret hic ad hunc diem Laurencium de Acouere et Margeriam vxorem eius ad cognizandum simul cum Rogero filio Iordani de Pulesdone et Constancia vxore eius quid Iuris clamant in tercia parte duarum parcium maneriorum de Blore et Grendone cum pertinenciis quam Hugo de Audeley de Blore in Curia hic concessit Iohanne que fuit vxor Iohannis le Stranne per finem etc. Et modo veniunt tam predicta Iohanna quam predicti Laurencius et Margeria et Rogerus et Constancia non veniunt Et iidem Laurencius et Margeria quesiti per Iusticiarios quid Iuris clamant in predicta tercia parte etc. Dicunt quod ipsi tenent ipsam terciam partem vt de Iure ipsius Margerie et clamant Ius et feodum etc.

Willoughby. You have here Lawrence of Oakover and Margery, his wife, who say that they ought not to make conusance of the manner of their tenancy without the others who are named in the writ being present in Court.

BEREFORD C.J. If you desire, for your own advantage, to make conusance, make it. The Court will not force you to it.

Willoughby. Lawrence and Margery claim fee in these tenements as of the right of Margery.

Scrope. They cannot say that, for we will aver that they had naught save a life term on the day conusance was made.

Herle. Show how they had naught but a life term.

Scrope. Show the facts yourselves, for it is your business to do it.

BEREFORD C.J. It is for you who are claiming estate through your conusor to show and disclose what estate your conusor had, and how they from whom you are claiming attornment have acquired possession of those tenements of which you are seeking to have the reversion.

And so he was forced by the Court to make conusance.

Denham. We tell you that one Constance leased these tenements to Lawrence and Margery for the term of Constance's life, and so they have no estate save for the term of the life of Constance, who held these tenements in the name of dower; and it is of that estate that they are seised, and we will aver it if the Court permit us.

Herle. Judgment of the fine, for in setting out our estate they have said that Constance held these tenements in the name of dower, but in the fine no more is said than that she is tenant for the term of her life. Judgment.

And the fine was annulled.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 88, Staffordshire.

The Sheriff was ordered to make come here on this day¹ Lawrence of Oakover and Margery, his wife, to make recognition together with Roger, son of Jordan of Palesdon, and Constance, his wife, what right they claim in the third part of two third parts of the manors of Blore and Grendon, with the appurtenances, which Hugh of Audley of Blore granted here in Court to Joan that was wife of John Lestraunge by a fine etc. And now come both the aforesaid Joan and the aforesaid Lawrence and Margery, and Roger and Constance do not come. And the same Lawrence and Margery, asked by the Justices what right they claim in the aforesaid third part etc., say that they hold that same third part as of the right of the same Margery and claim right and fee etc.

¹ i.e. the quindene of St. Hilary.

Note from the Record—continued.

Et Iohanna dicit quod predicti Laurencius et Margeria iniuste clamant feodum etc. Dicit eniu quod predicti Rogerus et Constancia ante leuacionem note etc. tenuerunt predictam terciam partem in dotem ipsius Constancie et illam dimiserunt predictis Laurencio et Margerie Tenendam ad terminum vite ipsius Constancie Ita quod tempore quo predicta nota leuauit iidem Laurencius et Margeria nullum alium statum habuerunt in predicta tercia parte nisi terminum vite ex dimissione ipsius Constancie vt predictum est Et hoc pretendit verificare etc.

Et quia predicta Iohanna cognoscit predictam terciam partem esse dotem ipsius Constancie et sic videtur quod predicta nota que nullam facit mencionem de dote etc. set quod ipsi Laurencius et Margeria Rogerus et Constancia tenent illam terciam partem ad terminum vite ipsius Constancie minus rite leuauit tacita veritate Ideo predicti Laurencius et Margeria ad presens sine die Et predicta Iohanna nichil capiat per concessionem istam quo ad illam terciam partem etc. set quo ad manerium et aduocaciones in predicta nota contenta [*sic*] excepta tercia parte predicta ingrossetur finis etc. Et eadem Iohanna quo ad illam terciam partem perquirat sibi per aliam concessionem si sibi viderit expedire etc.

4. ANON. v. ANON.¹

De dote vnde nichil habet ou le tenaunt dit quele auoit resceu partie etc. et demaunda iugement de bref. Et pur ceo qe il auoit dedit partie de la tenaunce il ne poeit mie enoier de cel excepcioun a labatement de bref.

En vn bref de dower—

Prissy.² La ou vous demaundez la terce partie de xij. acres de terre et vij. acres de pree et L. s. de rente en E. ³nous vous dioms qe⁴ nous ne tenoms forqe x. acres de terre et v. acres de pree et xx. s. de rente et vous dioms qe vous mesmes de la terce partie de cele rente estes seisi et de nostre assignement deneyne en mesme la ville et demaundoms iugement du bref.

Will. Vous estes pleynement tenaunt etc. prest etc.

Et Nota qe *Prissy*⁵ ne poet enioier de⁶ sa excepcioun al abatement du bref pur ceo qe il auoit dedit la tenaunce du⁷ partie de la demaunde vt supra.

⁸Postea *Cauntebr.*⁹ en dreyt de partie de la demaunde disoient quele fut seisi de son tiers et quant a remeindre il rendera dower.

¹ Reported by *B. M* and *X.* Text from *B* collated with *M* and *X.* ² *Prilly*, *M*, *X.* ³⁻⁴ Added from *M* and *X.* ⁵ *Prilly*, *M*, *X.* ⁶ *M* and *X* omit. ⁷ en. *M*, *X.* ⁸⁻⁹ *Caunt. Bacoun*, *M*, *X.*

Note from the Record—*continued*.

And Joan saith that the aforesaid Lawrence and Margery do unjustly claim fee etc., for she saith that the aforesaid Roger and Constance before the levying of the note etc. held the aforesaid third part as the dower of the same Constance and leased it to the aforesaid Lawrence and Margery to hold for the term of the life of the said Constance, so that at the time when the aforesaid note was levied the same Lawrence and Margery had no other estate in the aforesaid third part than a life term by the lease of the said Constance, as is aforesaid. And this she doth offer to aver etc.

And because the aforesaid Joan doth acknowledge the aforesaid third part to be the dower of the said Constance and so it appeareth that the aforesaid note, which maketh no mention of dower etc. but [saith] that the said Lawrence and Margery [and] Roger and Constance hold that third part, for the term of the life of the said Constance, was improperly levied, the truth not being stated. Therefore the aforesaid Lawrence and Margery are for the present to go away without a day. And the aforesaid Joan is to take nought by that grant so far as that third part is concerned etc., but in respect of the manor and the advowsons comprised in the aforesaid note, the aforesaid third part being excepted, a fine is to be engrossed etc. And the same Joan is to purchase to herself that same third part by some other grant if it shall seem to her expedient etc.

4. ANON. v. ANON.

Writ of dower *unde nihil habet*, where the tenant said that the claimant had received part etc., and he asked judgment of the writ; but because he had denied that he was tenant of the whole tenancy laid in the writ he was not allowed to avail himself of this exception in abatement of the writ.

In a writ of dower—

Prilly. Whereas you are claiming the third part of twelve acres of land and of seven acres of meadow and of a rental value of fifty shillings in E., we tell you that we hold but ten acres of land and five acres of meadow and a rental value of twenty shillings; and we tell you that you yourself are seised of the third part of that rental value in that same vill by our assignment; and we ask judgment of the writ.

Willoughby. You are tenant of the whole etc.; ready etc.

And note that *Prilly* could not avail himself of his exception to abate the writ because he had denied that he was tenant of a part of that in respect of which dower was claimed *ut supra*.

On a later day *Cambridge* said that the plaintiff was seised of her third in respect of a part of her claim, and that the tenant would give her dower in respect of the residue.

5. THE PRIOR OF ST. MARY'S, BISHOPSGATE,
v. HAVERING AND OTHERS.¹I.²

Replegiare ou le defendant auowa pur sewte par resoun de nounage vn enfaunt qe fust en sa garde par resoun de nurture et dit qe le Ael lenfaunt fust seisi de la sewte le pleintif dit et mustra par fet qil tendra les tenementz par certain seruices renduz.

Iohan priour de T. porta son replegiare vers Isabel Haueryngham. Isabel coniseit la prise etc. come gardeyn vn³ enfaunt deinz age en sa garde esteaunt par resoun de Norture et par la resoun qe mesme celui Priour teint de lui vn mes et vne carue de terre etc. par homage et par fealte etc. et par les seruices de ij.⁴ s. et siwete a sa court de S. de .iiij. semayns etc. des queux seruices vn R. Ael lenfaunt feut seisi par my la mayn cesti Priour etc. et pur ceo qe la siwete feut arrere etc. si conust ele la prise et⁵ [*sic*] noun lenfaunt.

Denum. Pur siwete ne poetz destresce conustre pur ceo qe mesme cele mees et carue de terre etc. feust en la seisine ⁶viane de Engayn⁷ qe hors de sa seisine enfeffa de mesme ceux tenementz vn Andreu Atteual⁸ a tenir a lui et ces heirs de luy et de ces heirs par homage fealte et par les seruices de ij. s. par an pur touz seruices le quel Andreu⁹ des cieux tenementz enfeffa vn Alexandre a tenir de chief seignour etc. le quel Alexandre si enfeffa le predecessour cesti Priour a tenir vt supra. De vyen descendu le dreit de ceux seruices a Iohan come a fiz et heir le quel Iohan graunta ceux seruices a G. Ael lenfaunt de qi seisine etc. le Priour sattorna etc. et demandoms iugement si en ceo cas puisset pur siwete conustre en coudre le fait etc.

Clau. Commune ley nous¹⁰ doune la destresce qe nous voloms auer la seisine le Ael etc. pur aforcer nostre auowerie anaunt la limitacioun du bref de nouele disseisine et par statut nest pas la destresce defendu qe lestatut veot ad sectam vel ad ¹¹aliud factum¹² de cetero non teneatur.¹³ Et les autres pointz de-statut ne¹⁴ defendent la

¹ Reported by *B, M, H, X* and *Z*. Names of the parties from the Record. ² Text of (I) from *B* collated with *M* and *X*. ³ *I, M, X*. ⁴ *iiij., M*. ⁵ *en, M, X*. ⁶⁻⁷ vigne de Vngarne, *M*; viane de Tayn, *X*. ⁸ *M* omits. ⁹ *M* and *X* *ad* hors de sa seisine. ¹⁰ *me, M*. ¹¹⁻¹² *faciendum, M*. ¹² *faciendum, X*. ¹³ *teneatur, M, X*. ¹⁴ *qe, M, X*.

5. THE PRIOR OF ST. MARY'S, BISHOPSGATE,
v. HAVERING AND OTHERS.¹

I.

Replevin, where the defendant avowed for suit of the right of an infant under age who was in his wardship for nurture; and he said that the infant's grandfather was seised of the suit. The plaintiff said and proved by a deed that he held the tenements by the performance of services certain.

John, Prior of T., brought his writ of replevin against Isabel Haveringham. Isabel acknowledged the seizure etc. as guardian of an infant within age that was in her wardship for nurture. And because this same Prior held of him a messuage and one carucate of land etc. by homage and by fealty etc. and by the services of two shillings and suit at his Court of S. from three weeks etc., of which services one R., grandfather of the infant, was seised by the hand of this Prior etc.; and because the suit was in arrear etc. she acknowledged the seizure in the name of the infant.

Denham. You cannot acknowledge distress for suit, because this same messuage and the carucate of land etc. were in the seisin of Vitalis of Engaine, who out of his seisin enfeoffed of these same tenements one Andrew Attwell to hold to him and his heirs of Vitalis and his heirs by homage, fealty and by the services of three shillings a year for all services; which Andrew enfeoffed one Alexander of these tenements to hold of the chief lord etc.; which Alexander enfeoffed the predecessor of this Prior to hold as above. The right in these services descended from Vitalis to John, as son and heir; and that John granted these services to G., grandfather of the infant, of whose seisin etc. The Prior attorned himself etc., and we ask judgment whether in these circumstances you can acknowledge for suit against the tenor of the deed etc.

Claver. Common law giveth us the distress, for we are ready to aver the seisin of the grandfather etc., to support our avowry within the time limited for a writ of novel disseisin; and distress is not forbidden by statute, for the statute saith that the feoffee is not for the future to be bound to suit nor to aught else against the form of his enfeoffment²; nor do the other provisions of the statute forbid distress

¹ See the Introduction, p. xxvii. above.

² Statute of Marlborough, ch. ix.: 'Qui autem per cartam pro certo servitio veluti pro libero servitio tot

solidorum annuatim pro omni servitio soluendorum feoffati sunt ad sectam vel aliud ultra formam sui feoffamenti non teneantur.'

destresce ne vous ayebnt par le auerement qe nous tendoms si large¹ du temps anaunt etc.

Scrop Iustice. Voilletz vous dunqe auoir de luy ceo qil nest mye tenuz a faire.

Clauer. Nous ne sumes qe gardeyn et ne pomes plus haut pleder qe a la possessioun launcestre lenfaunt et demandoms iugement.

Berr. Vous poietz a vostre dit estre partie a conustre² vn tort et ne mye a redresser ceo.³

Clauer. ⁴Vous estes⁵ auxi anaunt a vous descharger ⁶par vostre respounse⁷ en la manere come vous deuetz en ceo cas come vous seretz en vn Ne vexes. Mes si vous portez⁸ vn Ne vexes vers lenfaunt certun est qe vous ne deschargeret pas deuers luy duraunt son nouuage auxi par de cea dil houre qe nous ne sumes qe Gardeinz et pledoms en noun lenfaunt ⁹et tendoms dauerer la possessioun Launcestre etc. vt supra.¹⁰

¹¹*Scrop.* Vous plodez en noun lenfaunt et auoez de la seisine le Ael come gardeyn et ne affermez nul possessioun en la persone le pere lenfaunt et vous ne poez garde auer si noun de ceo qe fut en la possessioun le pere lenfaunt par qei il semble par vostre plee demene qe lauowerie nest mye done a vous et si est la verite qe le pere morust en demandaunt ceux seruices.¹²

Inge a Clauer. Nous auons regard a ceo qe le piere suruesquit lael et fust hors anxi qe vous nautz rienz si noun en garde par resoun de Norture ou vous seretz charge daconnter al heir qant il vendra a son pleyu age etc. par qai attendez vos iugements.

II.¹³

Replegiare.

Le abbe de H. porta son replegiare vers Richard de B. et sey pleyut ses auers atort estre prises nonement deux boefs en la vile de B. en certeyn leu etc.

Richard conust la prise lon com gardayn R. fitz E. par la resoun qe meyme l'abbe tynt de R. fitz E. deux carnez et par les seruices de ij. s. par an et par suyte a la curte R. de C de treis simaines en troys simaynes des quels seruices il fut sei-si par mi la mayn W. predecessour etc. et pur la suyte arere il conoist la prise etc.

¹ Iage, M. ² From X; comencer, B, M. ³ le, M. ⁴⁻⁵ il vous est, M. ⁶⁻⁷ Added from M. ⁸ portasset, M. ⁹⁻¹⁰ from Y. For these words B and X corruptly interpolate the last sentence of *Scrop's* immediately following speech: *par qai . . . ceux seruices.* ¹¹⁻¹² From X. ¹³ Text of (II) from H

nor help you against the averment which we offer of a time so long before etc.

SCROPE J. Do you want, then, to get something from him which he is not bound to give you ?

Claver. We are only the guardian and we cannot plead higher than the possession of the infant's grandfather, and we ask judgment.

BEREFORD C.J. According to what you say, you may be a party to admitting a wrongful action but not to redressing it.

Claver. You can here rightly discharge yourself by your answer only in the same way as you could in a *ne rezes*. But, if you brought a *ne rezes* against the infant, it is certain that you could not discharge yourself against him during his nonage. So here, since we are only guardian and are pleading in the name of the infant, and we are ready to aver possession by the ancestor etc. as above.

Scrope. You are pleading in the name of the infant, and you have, as guardian, the seisin of the grandfather, and you do not affirm any possession in the person of the infant's father, and you cannot have the wardship of aught but of that which was in the possession of the infant's father. It seemeth, consequently, by your own pleading that the avowry is not given to you ; and the truth is that the father of the infant was claiming these services at the time of his death.

INGE J. to Claver. We attach weight to the fact that the father survived the grandfather and was out of seisin [of the services], so that you have naught save as guardian by nurture, and as such will be bound to account to the heir when he attaineth his full age etc. ; and so await your judgments.

II.

Replevin.

The Abbot of H. brought his writ of replevin against Richard of B. and complained of the wrongful seizure of his cattle, to wit, two bullocks, in the vill of B., in a certain place etc.

Richard admitted the seizure by him as guardian of Robert, the son of E., for the reason that the same Abbot held of Robert, so nof E., two carneates by the services of two shillings a year and by suit at Robert's Court of S. from three weeks to three weeks, of which services he was seised by the hand of W., predecessor etc., and he acknowledged the seizure etc. for suit in arrear.

Scrop. Pur suyte arer ne poez auowerie faire qar ces tenementz quels vous chargez de suyte furunt en la seisine viene ael cesti Robert qy gardayn vous estes la quele viene ces tenementz hors de sa seisine dona a W. de B. par ceste chartre le quel W. nous graunta et dona son estate a tenir com il tynt.

La chartre fut tendie en court et tesmoygna qe viene dona ces tenementz a tenyr de luy par homage fealte escuage et par les seruices de ij. s. par an pur tous seruices.

Scrop. Vous auez entendu coment ces tenementz passaient hors de la seisine viene auncestre lenfaunt qy gardayn ad conu ceste prise a tenyr par certeyn seruices compris deynz ceste chartre demaundoms iugement si pur autre seruices qe il ni est compris pussez auowerie fayre.

Clauer. Vous auez done respons pur esteyndre les seruices pur queus nous auoms ceste conoissance fete a quel respons nous ne pooms estre partie sanz lenfaunt et prioms aide de luy.

Denom. Eide ne deuez auer de vostre tort kar vous nauez mie cause de destresce.

Clauer. Statut par qey vous eidez si uoet qe si quis pro certo pro omni seruicio ad sectam non teneatur le teneatur est en le dreit qe suppose plus naturelement descharge par le ne uexes qe par counterpleder destresce qe est en possessioun la quele nous uoloms auerer dount nous semble qe a ceo qe vous vostre teneiment deschargerez mez ceo couient estre en le dreit qe suppose ne uexes.

Scrop iustice. Il semble qe statut ne lur aide pas kar le statut parele [*sic*] si quis pro certo tot solidos pro omni seruicio cely qe tynt par foreyn il ne tynt pro certo seruicio.

Toudeby. Demaunt statut seneschaus de grauntz seynours solaynt fere touz ceux qe tyndrent en cheualerie fere suyte.

Berr. Couient qe homme dit pur celle reson le statut fete.

Clauer. Ieo ne entenk mie sire la ou ceste auowerie est fet par le gardeyn qe ne poet estre partie de trier le dreit lenfaunt deynz age sanz aide de luy qy aide ne luy serra graunte et unkore si il purcesit le ne uexes uers lenfaunt il demourait en sa possessioun sanz estre

Scrope. You cannot avow for suit in arrear, for these tenements which you are charging with suit were in the seisin of Vitalis, grandfather of this Robert, whose guardian you are; and that Vitalis gave these tenements out of his seisin to W. of B. by this charter; and that same W. granted them to us, and gave us his estate therein to hold as he held.

The charter was tendered in Court and it witnessed that Vitalis gave these tenements to be holden of him by homage, fealty, sentage and by the services of two shillings a year for all services.

Scrope. You have heard how these tenements passed from the seisin of Vitalis, ancestor of the infant whose guardian hath acknowledged this seizure, to be holden by certain services set out in this charter. We ask judgment whether you can make avowry for any other services than those mentioned therein.

Claver. The effect of your answer is to extinguish the services for [the arrears of] which [we levied the distress which] we have acknowledged; and to that answer we cannot be party without the infant, and we pray aid of him.

Denham. You ought not to have aid in your own tort, for you had no ground for distress.

Claver. The statute¹ on which you rely provideth that if anyone be enfeoffed to hold by a service certain for all services he is not to be bound to do suit. The word *teneatur* [in the statute] goeth to the right, and importeth that a discharge would be more naturally got by a writ of *ne vexes* than by counterpleading distress, which goeth to the possession, and we are ready to aver that. It seemeth, then, to us that if you want to discharge your tenements, which is a matter that affecteth the right, you ought to do it by a writ of *ne vexes*.

SCROPE J. It seemeth that the statute doth not help them, for the words of the statute are: 'if anyone hold by a certain service of so many shillings for all services'; but he who holdeth by forinsec services doth not hold by a service certain.

Toudeby. Stewards of great lords were wont before the statute to make all who held of them by knight's service do suit.

BEREFORD C.J. It is said that the statute was made on that account.

Claver. I do not think, Sir, since this avowry is made by the guardian, who cannot be a party to trying the infant's right during his nonage without aid from him, that aid will not be granted to him. And, again, if the plaintiff brought his writ of *ne vexes* against the infant, the infant would still remain seised [of the

¹ Statute of Marlborough. See footnote on p. 18 (right-hand side).

oghte duraunt son nonnage dount del hure qe le gardeyn qe maintent lestate lenfaunt dedeynz age autre chose nestut fayre forsqe mayntener la possessioun pur ceo qe lenfaunt si il fut ioint en eide autre chose ne freit duraunt son nonnage et nous voloms auerer nostre seisine du tens de limitacioun de bref de nouele disseisine.

Inge. Les tenementz furent en la seisine viene de Engaine qy ceo tenementz dona hors de sa seisine a W. de B. a tenyr par les seruices auauntnomez W. ceux tenementz dona a Andreu .S. qe le abbe feffa a tenyr en ceste maner de viene de N. [sic] le dreit de seruices a I. com a fiz le quel .I. ceux seruices graunta a simond de Hauering de simond descendit le dreit de seruices a I. de I. a I. enfaunt deynz age vous liez la seisine de cez seruices par mie la mayne vn W. abbe predecessour meyme cesti abbe et ditez qe vostre ael fut seisi des seruices et ditez qe puy la limitacioun de bref de nouele disseisine et ne auez nient moustre qe vostre pier de ces seruices fut seisi issi semble interrupcioun de vostre seisine.

III.¹

Vn auowery fut fet pur ceo qil tient de luy etc. et par suite a sa court de iij semeins etc. et pur ceo qil fist defaute a sa court tenu etc. si fust il amercie etc. et pur lamerement etc.

Scrop. Pur suite ne poetz etc. qar vn A. vostre auncestre qi heir etc. dona etc. par ceste chartre a vn B. nostre auncestre qi heir etc. a tenir de luy etc. par les seruices de ij. s. par an pur touz seruices salvo forinseco seruicio quantum pertinet etc. et graunta par mesme le fet qe luy et ses heirs fussent quites de suite a touz iours iugement.

Herle. Nous voloms auerer qe nous et nos auncestres auoms estre seisi etc. auant la limitacion du bref de nouele disseisine.

Scrop. Statut voet qe ceux qe sount feffetz par certains seruices pur touz seruices queux ne seyent destreint etc. et auxi le fet nous aquite par espresse parole et cele clause de statute ne limite nul temps de nule seisine etc.

Herle. Statut parle pro certo seruicio tot solidorum etc. et le fet

¹ Text of (III) from Z.

services] without being ousted from them during his nonage. The guardian, then, who maintaineth the estate of the infant within age, cannot do more than maintain the possession ; and even if the infant himself were joined with him in aid, he still could do naught else during the infant's nonage ; and we will aver our seisin within the time limited for a writ of novel disseisin.

INGE J. The tenements were in the seisin of Vitalis of Engaine, who out of his seisin granted these tenements to W. of B. to hold by the aforesaid services. W. granted these tenements to Andrew S., who enfeofed the Abbot to hold by the same services of Vitalis of Engaine. The right in the services [descended] to J. as son, which J. granted these services to Simon of Havering. The right in the services descended from Simon to J., from J. to J., an infant within age. You lay the seisin of these services by the hand of Abbot W., predecessor of this same Abbot, and you say that your grandfather was seised of the services, and you say that [he was seised] within the time limited for a writ of novel disseisin ; but you have not shown that your father was seised of these services, and so it appeareth that there was an interruption in your seisin.

III.

An avowry was made on the ground that the plaintiff [in a writ of replevin] held of the defendant by etc. and by suit at his Court from three weeks etc. ; and because the plaintiff made default at the defendant's Court held etc., he was amerced etc., and for the amercement etc.

Scrope. For the suit you cannot etc., for one A., your ancestor, whose heir etc., granted etc. by this charter to one B., whose heir etc., to hold of him by the services of two shillings a year for all services except for such forinsec service as pertaineth etc., and he granted by this deed that he and his heirs should be quit of suit for ever. Judgment.

Herle. We are ready to aver that we and our ancestors have been seised etc. since a time before the limitation of a writ of novel disseisin.

Scrope. The statute¹ provideth that they who are enfeofed by services certain for all services shall not be distrained² etc., and the deed acquitteth us thereof by express words ; and that clause of the statute layeth down no limitation as to the time of the seisin etc.

Herle. The statute speaketh of a service certain of so many shillings etc., while the deed doth not make certain provision etc. for it saith

¹ Statute of Marlborough, cap. ix.

² The words of the statute are : *non teneatur*.

ne determine my en certain etc. qar il voet saluo forinseco etc. et issint hors de cas de statut.

Berr. agarda qassez fut il en cas de statut.

Herle. Nous voloms auerir qe seisi etc. du temps dount memore etc.

Scrope. Respoudez al fet.

Berr. Respoudez a la seisine qar si le fet se fist auant temps etc. il vous vaudra poy etc.

Scrop. Son auneestre fist cel fait a moun auneestre pus temps de memore prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 30d., Essex.

Elizabetha que fuit vxor Iohannis de Haueringge de Habenhathe Ricardus filius Baldewini et Thomas Crast summoniti fuerunt ad respondendum Priori noui hospitalis beate Marie extra Bisshopesgate Londone de placito quare ceperunt aueria ipsius Prioris et ea iniuste detinuerunt contra vadium et plegios etc. Et vnde Idem Prior per Thomam le Palmere attornatum suum queritur quod predicti Elizabetha et alii die Iovis proxima ante festum sancti Michaelis anno regni domini Regis nunc septimo in villa de Vpmenstre in quodam loco qui vocatur Wottoneslonde ceperunt quemdam taurum et quemdam bouem ipsius Prioris et eos iniuste detinuerunt contra vadium et plegios etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam decem librarum et inde producit sectam etc.

Et Elizabetha et alii per Adam de Brom attornatum suum veniunt et defendunt vini et iniuriam quando etc. Et Elizabetha respondet pro se et pro aliis. Et bene cognoscit predictam capcionem et iuste tanquam custos corporis et terrarum cuiusdam Iohannis filii Iohannis de Hauerynge Quia dicit quod predictus Prior tenet de ipso herede vnum Messuagium triginta acras terre vnam acram prati et octo acras bruiere cum pertinenciis in predicta villa de vpmenstre per homagium et fidelitatem et seruicia vicesime partis feodi vnus militis videlicet ad scutagium domini Regis quadraginta solidorum cum acciderit duos solidos Et ad plus plus et ad minus minus et per seruicia duorum solidorum et sex denariorum per annum Et faciendi sectam ad Curiam ipsius heredis de vpmenstre de tribus septimanis in tres septimanas De quibus seruiciis quidam Simon de Habenhathe auus predicti heredis cuius heres etc. fuit seisis per manus cuiusdam Roberti de Cerne quondam Prioris Hospitalis predictae vt per manus vere [*sic*] tenentis sui Et quia predicta secta ei aretro fuit per vnum annum et dimidium ante diem capcionis predictae

'except forinsee etc.,' and so you do not come within the provisions of the statute.

BEREFORD C.J. ruled that they were sufficiently within the provisions of the statute.

Herle. We are ready to aver that we were seised etc. from a time beyond memory etc.

Scrope. Reply to the deed.

BEREFORD C.J. Reply to the seisin, for if the deed were made before the time etc. it will avail you little etc.

Scrope. His ancestor made this deed to my ancestor within the time of memory, ready etc.

And issue was joined.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 30d., Essex.

Elizabeth that was wife of John of Havering of Habenhathe, Richard, son of Baldwin, and Thomas Crast were summoned to answer the Prior of the New Hospital of Blessed Mary without Bishopsgate, London, of a plea why they took the beasts of the same Prior and them did unjustly detain against gage and pledges etc. And thereof the same Prior, by Thomas the Palmer, his attorney, doth complain that the aforesaid Elizabeth and the others on the Thursday next before the Feast of St. Michael in the seventh year of the lord King that now is, in the vill of Upminster, in a certain place called Woottonsland, did take a certain bull and a certain bullock, the property of the said Prior, and them did unjustly detain against gage and pledges etc., whereby he saith that he hath suffered loss and hath damage to the value of ten pounds; and thereof he produceth suit etc.

And Elizabeth and the others, by Adam of Brome, their attorney, come and deny force and injury when etc. And Elizabeth answereth for herself and for the others. And she doth fully admit the aforesaid seizure, and doth justify it as the guardian of the body and of the lands of a certain John, son of John of Haveringham; for she saith that the aforesaid Prior doth hold of that same heir one messuage, thirty acres of land, one acre of meadow and eight acres of heath, together with the appurtenances, in the aforesaid vill of Upminster by homage and fealty and the services of one twentieth part of one knight's fee, to wit, two shillings, to the scutage of the lord King of forty shillings, when it shall occur, and when more, more, and when less, less; and by the service of two shillings and six pence a year and of doing suit at the said heir's Court of Upminster from three weeks to three weeks; of which services a certain Simon of Habenhathe, grandfather of the aforesaid heir, whose heir etc. was seised by the hands of a certain Robert of Cerne, aforetime Prior of the aforesaid Hospital, as by the hands of his very tenant. And because the aforesaid suit was in arrear to him [the aforesaid heir] for one year and a half before the day of the seizure, she seized the aforesaid beasts

Note from the Record—continued.

cepit ipsa predicta aueria in predicto loco qui est parcella predictorum tenementorum in feodo ipsius heredis sicut ei bene licuit etc.

Et Prior dicit quod predicta Elizabetha predictam capcionem iustam cognoscere non potest pro predicta secta pretextu alicuius seisine quam asserit predictum Simonem auum predicti heredis inde habuisse per manus predicti Roberti predecessoris etc. Quia dicit quod predicta tenementa dudum fuerunt in seisina cuiusdam vitalis Engayne qui tenementa illa tempore domini Henrici Regis aui domini Regis nunc dedit concessit et carta sua confirmauit cuidam Alexandro filio Roberti de Bucktone Tenenda eidem Alexandro et heredibus suis etc. de ipso vitali et heredibus suis reddendo inde annuatim sibi et heredibus suis duos solidos et sex denarios pro omni seruicio consuetudine et accione et pro omnibus rebus ad ipsum vel heredes suos inde pertinentibus salvo forinseco seruicio domini Regis quantum pertinet ad tantum tenementum Et obligauit se et heredes suos ad warrantizandum predicto Alexandro pro homagio et seruicio suo et heredibus et assignatis predicta tenementa etc. contra omnes homines et feminas per predictum seruicium etc. Et profert quamdam cartam sub nomine predicti vitalis factam predicto Alexandro quod hoc testatur Et dicit quod predictus Alexander de tenementis illis feoffauit quemdam Andream de Horningdone Tenendis de capitalibus dominis feodi etc. per seruicium inde debitum etc. Qui quidem Andreas de tenementis illis feoffauit quemdam predecessorem ipsius Prioris Tenendis sibi et successoribus suis imperpetuum de capitalibus dominis feodi per seruicia inde debita etc. Et dicit quod post mortem predicti vitalis Ius predictorum seruiciorum descendebat cuidam Iohanni Engayne vt filio et heredi predicti vitalis Qui quidem Iohannes Engayne seruicia predicta concessit predicto Simoni aui predicti heredis vnde petit Iudicium si predicta Elizabetha custos etc. nomine predicti heredis cuius antecessores extranei fuerunt perquisitores de predictis seruiciis vt premittitur pro secta vel pro aliquo alio seruicio quam in predicta carta predicti vitalis capitalis domini etc. continetur aliquam districtionem facere potest seu debeat in hoc casu etc. Et super hoc dies datus est eis hic In octabis sancti Hillarii in eodem statu quo nunc saluis partibus rationibus suis hinc inde dicendis etc. Ad quem diem venerunt partes predictae per attornatos suos Et dies datus est [eis] hic in Octabis Sancte Trinitatis in eodem statu quo nunc saluis partibus rationibus suis hinc inde dicendis de consensu parcium predictarum etc.

Note from the Record—continued.

in the aforesaid place, which is parcel of the aforesaid tenements, within the fee of the said heir, as she was well entitled to do etc.

And the Prior saith that the afore-said Elizabeth cannot justify the aforesaid seizure in respect of the aforesaid suit on the ground of any seisin which she asserteth that the aforesaid Simon, grandfather of the aforesaid heir, had thereof by the hands of the aforesaid Robert, predecessor etc. ; for he saith that the aforesaid tenements were lately in the seisin of a certain Vitalis Engayne who gave, granted and by his charter confirmed those tenements in the time of the lord King Harry, grandfather of the lord King that now is, to a certain Alexander, son of Robert of Buckton, to hold to the same Alexander and his heirs etc. of him, Vitalis, and his heirs, rendering therefor every year to him and his heirs two shillings and six pence for all services, customs and actions, and for all things pertaining to him or his heirs in respect thereof, save such forinsec service as the lord King may be entitled to in respect of a tenement of such extent. And he bound himself and his heirs, in consideration of Alexander's homage and services, to warrant to the aforesaid Alexander and his heirs and assigns the aforesaid tenements etc. against all men and women in consideration of the aforesaid service etc. And he doth proffer a certain charter under the name of the aforesaid Vitalis made to the aforesaid Alexander which witnesseth this. And he saith that the aforesaid Alexander enfeoffed a certain Andrew of Horndon of those tenements to hold of the chief lords of the fee etc. by the service due therefrom etc. ; the which Andrew enfeoffed a certain predecessor of the Prior of those tenements to hold to himself and his successors for ever of the chief lords of the fee by the services due therefrom etc. And he saith that after the death of the aforesaid Vitalis the right in the aforesaid services descended to a certain John Engayne as son and heir of the aforesaid Vitalis ; the which John Engayne granted the aforesaid services to the aforesaid Simon, grandfather of the aforesaid heir ; and in respect of this he asketh judgment whether the aforesaid Elizabeth, guardian etc., in the name of the aforesaid heir, whose ancestors were strange purchasers of the aforesaid services, as is premised, can or ought to levy in these circumstances any distress for suit or for any other service than those contained in the aforesaid charter of the aforesaid Vitalis, chief lord etc. And upon this a day is given them here in the octaves of St. Hilary in the same state in which they now are, the right of argument being reserved to the parties etc. Upon which day the aforesaid parties came by their attorneys ; and a day was given them here in the octaves of the Holy Trinity in the same state in which they now are, the right of stating their arguments being still reserved to them, by the consent of the aforesaid parties etc.

6. KEMSTON v. RALPH (AN INFANT), SON OF JOHN,
AND OTHERS.¹I.²

Assisa noue disseisine ou priuete de saunk feut allegge qe le pleintif³ [sic] dit qe son Ael fust seisi etc. apres qi mort entra son piere apres qi mort il entra com fitz et heir et demanda iugement si il com fitz pusnee doit a lassise etc. Le pleintif dist qe en la seisine son piere il fust seisi .x. aunz tanke etc. et pus feust agarde qil ne prest rien par son bref.

William le fitz Water le myster porta vne assise de nouele disseisine vers Rauf le fitz Iohan de grand mysin.

Toud. Assise ne deit estre qe nous vous dioms qe ceux tenementz furent en la seisine vn Wauter qe morust seisi apres qi mort entra Iohan nostre Piere et morust seisi apres qi mort nous sumus entre come fitz et heir iugement si sauntz tittle etc. assise deue estre.

Denum. Seisi et disseisi et prioms lassise.

Toud. Nostre ael morust seisi vt supra et auoit deux fitz William et Iohan. Iohan feut eisme et muliere et entra vt supra et morust seisi apres qi mort nous entraumes etc. par qei nous demandoms iugement si vous qestes fitz pune Wauter nostre ael a nulle assise deuetz auenir encountre nous etc. saunz moustre tittle.

Denum. En la vie Iohan etc. si fumes nous seisi .x. aunz etc. et disseisi par ceux qe sont nomez etc.

Toud. Coment seisi.

Herle. Ceo nay ieo pas mester a monstrar qe qaunt parties pledunt en court et le respouns lun put ester od laccionn lautre [la] court ne mettra pas le demandant a pleder ceo qe ne put my venir en effect mes ore put ceo qil dient estre de nostre accionn et tut feysoms nous tittle par vne veye il ne purreit mye preudre effect qil sil tut trone qe nous fuissoms seisi par autre tittle etc. et disseisi iugement ceo freit par nous et prioms lassise.

Berr. Si vous voilletz anier lassise dites nous pur qei et coment.

Fr. Il est dedeinz age et put nyent pleder en le dreit et tut voisisonas pleder a luy a ceo qil chacee eigne et puigne il ne purreit estre partie

¹ Reported by *B, C, D, E, H* and *M*. Names of the parties from the Record. ² Text of (1) from *B*, collated with *M*. ³ *Pleintif* is obviously a mistake for *tenant*.

6. KEMSTON v. RALPH (AN INFANT), SON OF JOHN,
AND OTHERS.¹

I.

Assize of novel disseisin where privity of blood was pleaded. The tenant² said that his grandfather was seised etc. and that upon his death his, the tenant's, father entered, and that upon his death he himself entered as son and heir; and he asked judgment whether the plaintiff, who was the younger son, ought to have an assize. The plaintiff said that he was seised for ten years during his father's seisin until etc. Judgment was afterwards given that he should take naught by his writ.

William, the son of Walter the Myster, brought an assize of novel disseisin against Ralph, the son of John of Great Massingham.

Toudeby. Assize ought not to be, for we tell you that these tenements were in the seisin of one Walter, who died seised; upon whose death John, our father, entered and died seised; and upon his death we entered as son and heir. Judgment whether assize ought to be unless the plaintiff show a title etc.

Denham. Seised and disseised, and we pray the assize.

Toudeby. Our grandfather died seised *ut supra* and had two sons, William and John. John was the elder born and was legitimate, and he entered *ut supra* and died seised. Upon his death we entered etc.; and therefore we ask judgment whether you who are the younger son of Walter our grandfather ought to get to any assize against us etc. unless you show a title.

Denham. We were seised ten years etc. in the lifetime of John etc. and disseised by those who are named etc.

Toudeby. How seised?

Herle. There is no need for me to tell you that, for when parties plead in Court, and the answer given by the defendant is compatible with the plaintiff's case, the Court will not make the claimant plead to what can never go to the issue; and what they say now is quite compatible with our claim. For though we laid one particular title we need not necessarily win on that title, for if the assize should find that we were seised by some other title, and then disseised, that finding would entitle us to judgment; and [so] we pray the assize.

BEREFORD C.J. If you want to have the assize tell us why and how.

Friskenev. The defendant is under age and cannot plead in the right. And even though we were willing to plead with him on the issue he is seeking to raise, the issue of elder or younger, he could not

¹ See the Introduction, p. xxvii, above. ² See the text and footnote thereon.
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par son nounage qe ceo serroit a pleder en le dreit. Item tut fut fyn mys auaunt ou autre chose qe feust de record vnqore couiendroit il prendre lassise en sa nature racione minoris etatis etc.

Denum. En la vie son auneestre ne purreit il heir estre ne droit auoir et nous moustroms nostre seisine en la vie seon auneestre de taunt des tenementz de quel seisine nous deuoms lassise auer et de la disseisine faite a ceu temps nous lassise.

Berr. Vous parrietz estre seisi .x. aunz en la vie son auneestre et si naueretz pas title de fraunctenement par qei moustret coment etc.

Toud. allegea le cas Iohan Chamberleyn.¹

Hle. dedist la semblance en taunt come en le cas ou il alleggea le pleyntif conysseit qil fust fitz et apres la conisaunce il ne purreit auenir a lassise saunz moustrer title.

Scrop. Ne nient plus ne put il nous chacer a moustrer title en ceo cas qil ne freit sil contast de la seisine son pere saunz faire mencion de le Ael qe la ou il comence son dist de la seisine Wauter seon ael il ne continue son dist dil Ael taunqe a seon pere qe nous dioms en la vie son pere si fumes seisi etc. et issi moustroms nous son title² et son dreit en la vie son pere discontinue etc. et prioms lassise.

Berr. Soun pere vous purreit auer lesse les tenementz .x. aunz ou .xij. et ³sur ceo⁴ vous parretz en soun temps auer elame autre estat et si vous naueretz pas de tiel estat lassise.

Inge. Sire Rauf de Hingham en son temps fut en oppinioun et ⁵sumes nous et dist a sire W. de Berford⁶ en assise de nouele disseisine qaunt le tenaunt se fait title de dreit en sa tenaunce par quele ley nous deuoms enquerre par assise ceo qe le plaintiff mesmes ne seetz⁷ mye dire.

Herle. Ceo serreit vn maruaille⁸ ley qaunt le tenaunt ad plede a lassise et soy escuse de tort come cesti fait ore a chascer le pleyntif ⁹a mostrer comment il aueroit lassise.¹⁰ Item Ieo pose qe nous portassoms nostre bref dentre foundu sur la nouele disseisine et il

¹ *M adds* qe fut entre freres eu. ² dit, *M.* ³⁻⁴ de suz cel, *M.* ⁵⁻⁶ si sumes ore Sire William de Berford et moy, *M.* ⁷ sauoit, *M.* ⁸ maruellouse, *M.* ⁹⁻¹⁰ From *M*; etc., *B.*

be a party to that issue by reason of his nonage, for it would be to plead in the right. Further, though a fine or other matter of record were tendered, it would still be necessary to take the assize in its form by reason of his being under full age etc.

Denham. The defendant could not be heir during the lifetime of his ancestor¹ nor have any right; and we show that we were seised of such and such of the tenements during the lifetime of his ancestor, of which seisin we are entitled to have the assize; and we pray the assize for the disseisin done at that time.

BEREFORD C.J. You might have been seised for ten years during the lifetime of his ancestor and yet have had no title to a freehold. Therefore show how etc.

Toudeby cited the case of John Chamberlain.

Herle denied the resemblance, because in the case cited the plaintiff admitted that [the defendant] was son, and after that admission he could not have the assize without showing title.

Scrope. He is no more entitled to force us in the present circumstances to show a title than he would be if the plaintiff were counting² of the seisin of his father without making mention of the grandfather; for, whereas he commenceth his story with the seisin of Walter, his grandfather, and doth not continue his story of the grandfather down to his father, we tell you that we were seised etc. in the lifetime of his father, and so we show that his title and his right were discontinued etc. in the lifetime of his father; and we pray the assize.

BEREFORD C.J. His father might have leased the tenements to the plaintiff for ten or a dozen years, and you might upon that, during his father's time, have claimed some other estate, but yet upon such an estate you will never have the assize.

INCE J. Sir Ralph of Hengham in his time was of that opinion, and so are we; and he said to Sir William of Bereford: 'When the tenant in an assize of novel disseisin maketh a title of right in his tenancy, by what law are we bound to inquire by assize of that which the plaintiff himself is unable to tell us.'

Herle. When the tenant hath pleaded to the assize and saith that he hath done no wrong, as the present tenant hath now done, it would be a strange law that would drive the plaintiff to show why he should have the assize. Further, I put the case that we brought our writ of entry founded upon novel disseisin and they pleaded as they do

¹ Because *nemo est heres viventis*.

assize of novel disseisin, but a complaint,

² The use of this word is technically incorrect. There was no count in an

querela.

pledassent come il fount il nous chascereint pas a faire title forqe a maintenir nostre bref auxi par de cea.

Toud. Non est simile [*sic*]¹ quia titulum in breui etc.²

Et habent diem in .xv. sancti Hillarii a queu iour agarde feut qil ne preit rien par son bref³ par ceo qe il ne se fyst pount title.⁴

II.⁵

William le fiz Wauter de Thenestone porta la nouel disseisine de soun fraunc tenement en .T.

Mug. Assise ne deit estre qe Ion ael lenfant morust seisi dez tenementz mys en vewe et en pleynte en soun demene com de fee et de dreyt le quel Ion auoit .ij. fiz Wautre et Ion Ion apres la mort I.⁶ son pere entra com fiz eyne et heir et morust seisi apres qi mort cest Rauf entra com fiz et heir et isseu del fiz eyne et plus digne de sank de [*sic*] mesme cesti Wauter et est deinz age ou mesme cesti Wauter se voleit auer abatue en soun heritage et il ly destourba et demaundoms ingement si a lassise deit auenir de tel abatement sang title moustren.

Scrop. Il prent son title pur barrer nous de lassise de lestat soun ael qe soun pere ad continue cum de fee et de dreyt et le quel estat continuant par cel contynuaunce ne nous put il barrer qe nous vous dioms qe en la vie Ion soun pere nous fumes seisi de mesmes ceus tenementz tanqe par vous disseisi et issi cele continuance interrompte par quele continuance nous nentendoms mye qe il nous put de la assise barrer.

Ing. Rauf de Hengham et William de Berford fuerunt en cel oppinioun qe si le tenant en assise de nouele disseisine se fet title a mayntenir sa tenance qe il ne serra mye chace a mayntenir soun fraunc tenement en verdit de .xij. si le pleyntif ne meyteigne sa pleynte par title mes le tenant se ad fet title par qei al assise ne deuez auenir si par title vostre pleynte ne meytenez.

Scrop. Nous auoms assigne en cel continuance vne interrupcion en la vie soun pere par .x. aunz issy qe le tens auant cel interrupcion ne le put valer ne le tens apres par qei il ne amount a neut plus mez qe soun pere morust seisi apres qi mort il fut entre com fiz et heir la

^{1,2} Added from *M*.

^{3,4} From *M*; etc., *B*.

⁵ Text of (II) from *C*.

⁶ *Wautre* was originally written in the text and was afterwards expuncted and *.I.* substituted.

now, they would not drive us to make a title except so far as was necessary to maintain our writ. So here.

Toudeby. It is not a parallel case, because the title in the writ etc.

And they have a day on the quindene of St. Hilary, on which day judgment was given that the plaintiff should take naught by his writ.

II.

William, the son of Walter of Kemston,¹ brought the novel disseisin of his freehold in T.

Miggeley. Assize ought not to be, for John, grandfather of the infant [*i.e.* of the tenant], died seised in his demesne as of fee and right of the tenements put in the view and the plaint; which John had two sons, Walter and John. Upon the death of John his father, John entered as elder son and heir, and he died seised. Upon his death this Ralph² entered as son and heir, and issue of the elder son and nearer in blood than that same Walter, and he is within age; and that same Walter desired to abate himself in his heritage and he ejected him; and we ask judgment if William ought to get to an assize in virtue of such abatement, without showing a title.

Scrope. The defendant, that he may bar us from the assize, baseth his title upon the estate of his grandfather, continued by his father as of fee and right; but he cannot bar us by reason that that estate was continued by such continuance, for we tell you that in the lifetime of John, his father, we were seised of these same tenements until we were disseised by you; and so this continuance was interrupted [by our seisin]; and we are of opinion that the defendant cannot bar us from the assize in virtue of such continuance.

INGE J. Ralph of Hengham and William of Bereford were of the opinion that if the tenant in an assize of novel disseisin showed a title in maintenance of his tenancy he should not be forced to maintain his freehold by a verdict of twelve if the plaintiff did not show a title in support of his plaint, while the tenant did make a title. Therefore you ought not to get to the assize unless you support your plaint by showing a title.

Scrope. We have asserted an interruption of ten years during the lifetime of his father of this continuance, so that the time before this interruption can avail him naught nor the time after it; and therefore what he saith amounteth to naught more than that his father died

¹ Corrected from the Plea Roll.

this report as the tenant's name.

² Ralph has not occurred before in

quele chose ne barre mye de assise eynz chet en escusant son tort et issi en point de assise par quei nous demandons iugement si par tel respouns qe chet en point de assise nous put de lassise barrer.

Ingh. Il nad nul interrupcion en le dreyt si noun cele seisine qe vous alleggez en la seisine soun pere et ne le affermez par title de dreyt.

Herele. Si ieo me face title et troue fut qe ieo nauey my fraunc tenement par cel title eynz par autre title vncore recoueray ieo par verdit de assise dount de pus qe ieo recoueray par assise ou moun title serreit par cas anenti semble par ley qe veyn serreit a title moustre si noun de prendre lassise par quele moun estat serra conu.

Berr. Et par cas si vous moustrassez title vous perdrez eynz ceo qe vous alassez de la barre.

Denom. Si nous facoms title lenfant nel purra nent trier pur ceo qe ceo est en le dreyt par quei nentendons mye qe vous nous chacerez a cel a quei vous ne poez mye estre partie a trier.

Et pus le pleyntif ne prist renz par soun bref par agarde pur ceo qil ne moustra poynt de title.

III.¹

Nouele disseisine vers enfaunte dedeynz age ou il se fit title et le pleyntif ne prist rien par son bref et si allega il seisine de x. aunz.

Willelmas le fitz Water de Kyngestone porta lassise de nouele disseisine vers Rauf le fitz I. enfaunt deynz age et se pleynt estre disseisi de son fraunc tenement en X.

Migg. Assise ne doit estre qe I. ael lenfaunt fut seisi et morust seisi des tenemenz mys en vewe etc. en son demene etc. quel I. auoit seisi² [*sic*] ij. fitz I. et W. I. apres la mort Ion pere entra com fitz et heir et morust seisi apres qi mort cely Rauf entra com fitz et issue del fitz eyngne et plus digne de sauuke de [*sic*] mesme cely W. et est deyuz age ou mesme cely W. voloit auer abatue en son heritage et ne ly suffyrereit et demaundons iugement si de cel abatement assise deyue estre saunz title moustre.

¹ Text of (III) from *D*, where it is ascribed to the Hilary Term of the eighth year. ² This word has apparently slipped in through the scribe's carelessness.

seised, and that he entered as son and heir after his father's death. That is a matter which is no bar to an assize, but is merely pleaded in excuse of his wrongful act, and so falleth within the points of an assize. Therefore we ask judgment whether he can bar us from the assize by an answer which falls within the points of an assize.¹

Ingham. There was no interruption in the right during the seisin of his father beyond the seisin which you allege but do not uphold by any title in the right.

Herle. If I lay a certain title and it be found [by assize] that I have no freehold by that title, but by some other title, I shall still recover by verdict of the assize. Since, then, I can recover by assize although my title may be defeated, it would appear to be useless at law to show other title than is sufficient to get an assize, which [assize] will declare my estate.

BEREFORD C.J. And, peradventure, if you should show a title you will lose, unless you should withdraw from the bar.²

Denham. If we make a title, the infant will not be able to try it because it is in the right, and therefore we do not think that you will drive us to do that which you are not competent to try.

And on a later day it was ruled that the plaintiff should take naught by his writ because he showed no title.

III.

Novel disseisin against an infant within age who showed a title, and the plaintiff got naught by his writ, although he alleged a seisin of ten years.

William, the son of Walter of Kemston,³ brought the assize of novel disseisin against Ralph the son of J., an infant within age, and complained of having been disseised of his freehold in N.

Migeley. Assize ought not to be, for J., the infant's grandfather, was seised and died seised of the tenements put in view etc. in his demesne etc. This J. had two sons, J. and W. After the death of John his father, J. entered as son and heir and died seised. After his death this Ralph entered as son and issue of the elder son and with better right to succeed than this William, and he is within age; and this same William desired to abate himself in Ralph's inheritance, and he would not suffer him to do so; and we ask judgment if assize ought to be in right of that abatement unless the plaintiff show a title.

¹ i.e. by saying something which is for the assize to determine.

² i.e. not fight a losing cause to the end.

³ Corrected from the Record.

Scrop. Taunt amounte qil entra par disseisine et prioms lassise.

Toud. Cest vn enfaunt deynz age et se fet title en le droit qe son ael morust seisi etc. apres qi mort I. son pere entra apres qi mort il est entree com fitz et heir et deynz [age] et vous vodrez auer abatu et issi vous ad il eonn vn abatement et demaundoms iugement desiecom il est entre par verray title destat dauncestre en auncestre si assise etc.

Scrop. Il prent son title pur nous barrer de lassise par taunt qe son Ael morust seisi et il entra par continuaunce de successioun sire par cel ne nous put il barrer qe nous vous dioms qen la vie soun pere nous sumes seisi de ceux tenemenz com de franne tenement par .x. aunz taunqe par vous et les autres disseisi sumes et issi cele continuaunce interrompte par qi demaundoms iugement etc.

Inge W. de Bereford furent en lopinioun qe si le tenaunt en assise de nouele disseisine se face title a meyntenir sa tenaunce qil ne serreit pas chace a mettre soun franc tenement en pays si le pleyntif ne meyn-tene sa pleynte par title mes ore il se fet title en sa tenaunce par qe vous nateudrez pas a lassise saunz title.

Scrop. Son title est de vne continuaunce en qi nous auoms assigne interrompeioun qe nous sumes seisi en la vie son pere .x. aunz issi qe nul continuaunce auant le tens de eel interrompeioun ne luy peut valir pur title ne le temps apres pur eeo qil namounte a nynt plus qe son pere morust seisi apres qi mort il est entre com fitz et heir quele chose ne barre pas lassise forqe en cusaunt son tort par qe nous prioms lassise.

Inge. Il ny ad nul interrompeioun en le droit si vous cele seisine qe vous allegez en la vie le pere affermez par title de droit.

Herle. Sy ieo me feyse title et troue fut qe ieo nauoi pas franc tenement par cel title eynz par autre vnqore recouery ieo par assise doumt deus qe ieo recouery par verdit dassise ou par cas moun title serreit anynty il semble qil serreit en veyn a mustre title noniement a cely qe ne put estre partie a eeo pleder.

Scrope. All that amounteth to saying that Ralph entered by disseisin, and we pray the assize.

Toudeby. The defendant is an infant within age, and he baseth his title on the fact that his grandfather died seised etc., upon whose death John, his father, entered, and upon his father's death he entered himself as son and heir; and he is within age and you tried to abate yourself [in his inheritance] and the plaintiff hath admitted that abatement; and, seeing that the defendant hath entered by a true title based on the estate of one ancestor descended to another, we ask judgment whether assize etc.

Scrope. In order to bar us from the assize the defendant baseth his title upon the fact that his grandfather died seised and that he himself entered by continuance of succession. Sir, by that he cannot bar us, for we tell you that during the lifetime of his father we were seised of these tenements as of a freehold for ten years until we were disseised by you and the others, and that continuance was thereby interrupted; and thereof we ask judgment etc.

INGE J. and W. DE BEREFORD C.J. were of opinion that if the tenant in an assize of novel disseisin showeth a title in support of his tenancy he should not be forced to submit [his right to] his freehold to a jury unless the plaintiff supporteth his complaint by showing a title; and here the tenant showeth a title to his tenancy, and you, therefore, will not get to the assize unless you show a title.

Scrope. The tenant's title is by uninterrupted continuance, but we have pleaded that there was an interruption in it by our seisin for ten years during his father's lifetime, so that he can derive no valid title from any continuance before the time of that interruption, nor by the time afterwards; and so his argument cometh to naught more than that his father died seised and that after his death he entered as son and heir, a fact which doth not bar the assize but is merely an excuse for his tortious act; and therefore we pray the assize.

INGE J. That doth not constitute any interruption in the right. If you [want to rely upon] that seisin which you allege you had in the father's lifetime, back it up by some title to the right.

Herle. If I lay a title and it be found that I have not a freehold by that title but have one by some other title I shall still recover by assize. Since, then, I can have a recovery by verdict of assize, even though the title I have laid be found bad, it seemeth that it would be waste of time to show a title to one who cannot be a party to pleading to it.¹

¹ i.e. it is no use pleading in the right to one who by reason of his infancy cannot answer a plea in the right.

Berr. Mustrez comment vous auensistes daue fraunc tenement et par quel title.

Frisq. Seisi pur .x. aunz en la vie son pere et en la mort son pere com de fraunc tenement prest etc. par assise.

Berr. Voletz autre chose dire.

Denom. Mesqe nous feissoms title en le dreit qe dirreit il certes rien qil ne put estre partie par son noun age.

Berr. Il dirreit ceo qe serreit pur son anauntage et pur ceo volez autre chose dire.

Herle. Nous demaundoms vos iugements etc. vt supra.

Berr. Lenfaunt est deynz age et se ad title fet et demaunde vous est si vous voles autre chose dire pur auer lassise et vous ne mustrez fet par qe fraunc tenement vous put acrestre ne successioun ne autre chose qe vous doune title de fraunc tenement par qe agarde la court qe vous ne preyngez rien par vostre bref eynz seyez en vn bon mercy etc.

IV.¹

Nouele Disseisine.

Vn assise de nouele disseisine fu porte vers vn William fuitz Henri de Kemsintone.

Tou. Assise ne deit est qe vn Richard nostre ael fu seisi de mesmes les tenementz et morust seisi apres qy mort entra Henri com fuitz et heir et nous apres la mort Henri sumes entre come fuitz et heir et vous estes frere pusne iugement si assise deyue estre saunz titil mustrer coment etc.

Denum. En la vie Henri son pere nous fumes seisi come de fraunc tenement pur .x. aunz taunqe par luy et les autres etc. fumes disseisi et prioms iugement.

Tou. Depus qe nous assignoms temps de nostre ael taunqe a nous et par verrei titil deynz quel temps vous ne purretz a cel fraunc tenement auenir saunz titil vous auetz bien le mestier de mustrer coment vous fustes seisi et par quel titil.

Denum. La ou vous dites qe nous ne assignoms pas temps deynz quel temps nous purrioms auer estee seisi nous assignoms interupcioun de vostre titil et dioms qen temps vostre pere nous fumes seisi etc. et en taunt vostre titil par quel titil vous entrastes come heir discontinue iugement si etc.

¹ Text of (IV) from *E*.

BEREFORD C.J. Show how you come to have a freehold and by what title.

Friskenev. Seised for ten years during the lifetime of the defendant's father, and, on the death of his father, seised as of a freehold, ready etc. by assize.

BEREFORD C.J. Do you want to say aught more?

Denham. Even though we showed a title in the right, what could he say? Of a surety, naught; for by reason of his infancy he cannot be party [to such a plea].

BEREFORD C.J. He could say what it might be to his advantage to say; and so do you want to say aught more?

Herle. He ask your judgment etc. *ut supra.*

BEREFORD C.J. The tenant is an infant within age and he hath shown a title, and you have been asked if you wish to say aught more why you should have the assize, and you neither show any deed by virtue of which a freehold might have accrued to you, nor do you show succession nor aught else to give you a title to a freehold. The Court, therefore, adjudgeth that you take naught by your writ but that you be substantially amerced etc.

IV.

Novel disseisin.

An assize of novel disseisin was brought against one William, son of Harry of Kemston.

Toudeby. Assize ought not to be, for one Richard, our grandfather, was seised of the same tenements and died seised: and after his death Harry entered as son and heir, and after the death of Harry we entered as son and heir, and you are the younger born brother. Judgment whether assize ought to be unless you show title how etc.

Denham. We were seised as of a freehold for ten years in the lifetime of Harry, the defendant's father, until we were disseised by the defendant and the others etc., and we pray judgment.

Toudeby. Since we can show a good title from the time of our grandfather down to our own time, you cannot claim to have had this freehold within that time without showing a title. You must, then, show how you were seised and by what title.

Denham. Whereas you say that we state no time within which we could have been seised, we say that there was an interruption of your title, and we say that we were seised etc. in the time of your father, and thereby your title, the title as heir, by which title you entered, was broken. Judgment whether etc.

Berr. Si vous voletz lassise auer il vous couent mustrer coment vous auenistes a cel fraunc tenement.

Herle. Il dist qil est le issue le eisne frere et par taunt voet il dire qe lassise ne gist point vers luy dount ieo pos qe nous deymes qe nous sumes frere eisne et troue fu qe noun vnkor vous enquerretz sur le gros si nous fumes disseisi ou nemye dunk a faire titil qe ne tout ne doune a lassise me semble qe nule ley ne me chace et demaundoms iugement dautrepart vne assise fu porte en le eyr de Kent ou le tenaunt se fist titil par voie de descent ou troue fu qil ne fu pas seisi par tel titil par qey il perdist et il suist lateynte et troue fu par lateynte qil fu seisi mes par altre titil et les .xij. ne furent pas amerciez ne reynz en ceo cas dunk a faire titil qe ne tout ne ne doune me semble qe court ne nous mettra pas a ceo faire.

V.¹

Assisa noue disseisine.

William le fiz Wauter de Kemelstone porta vne assise de nouele disseisine vers rauf le fiz Iohan de graunt Massingham et sey pleynt estre disseisi de vn mes et deux carues de terre en graunt Massingham.

Denom. Sire nous vous dioms qe vn Wauter nostre ael fut seisi de ceus tenements apres qy mort Iohan son fiz entra com fiz et heyr et morust seisi apres qy mort rauf qe cy est entra com fiz et heyr et est dcynz age et demaunde iugement si vous deuez a la assise venyr si vous ne facez title coment fraunk tenement luy acrust.

Herel. A ceo ne nous chacerez vous qar ceo qe vous donez en leu de chace [*sic*] a fayre title ceo est en escusement de tort qar la ou vous ditez qe vous entrastes com fiz et heyr taunt amounte com nient par disseisine.

Berr. Nest pas issint.

Scrop. Nous vous dioms qe Wauter morust seisi apres qy mort Iohan entra com fiz cyne et murust seisi apres qy mort rauf entra et demaundoms iugement etc. depuys qe William fut le fiz puyne Wauter si a la assise deit venyr si il ne moustre title.

Herel. Moustre title ne couient qar si ieo faise title et fut troue qe

¹ Text of (V) from H.

BEREFORD C.J. If you want to have the assize you must say how you came to have this freehold.

Herle. The tenant saith that he is the issue of the elder son and for that reason he is of opinion that the assize doth not lie against him. Now I put the case that we said that we were the elder brother and that it was found that we were not. You would still inquire as to the principal matter, whether we were disseised or not. It seemeth to me, then, that no law forceth me to show a title which can neither give me the right to an assize nor deprive me of one; and we ask judgment. Again, an assize was brought in the Eyre of Kent where the tenant showed a title by descent; but it was found that he was not seised by such a title, and he therefore lost. He sued out a writ of attaint and it was found by the jury of attaint that he was seised, but under some other title, and the twelve [of the assize] were not amerced or fined in these circumstances. It seemeth to me, then, that the Court will not make us show a title which could neither give us nor deprive us of [an assize].

V.

Assize of novel disseisin.

William, the son of Walter of Kemston, brought an assize of novel disseisin against Ralph, the son of John of Great Massingham; and his plaint was that he had been disseised of a messuage and two carucates of land in Great Massingham.

Denham. Sir, we tell you that one Walter, our grandfather, was seised of these tenements, and upon his death John, his son, entered as son and heir and died seised; and upon his death Ralph who is here entered as son and heir; and he is within age and asketh judgment whether you¹ ought to get to the assize unless you show a title by which a freehold acerued to the plaintiff.

Herle. You will not force us to do that, for what you are alleging in order to force us into showing a title is only to excuse your own wrongful action; for when you say that you entered as son and heir, that amounteth merely to saying that you did not enter by disseisin.

BEREFORD C.J. That is not so.

Scrope. We tell you that Walter died seised, and that upon his death John entered as elder son and died seised, and that upon his death Ralph entered; and we ask judgment etc. whether, seeing that William was the younger son of Walter, he ought to get to the assize unless he show a title.

Herle. He need not show a title, for if I were to lay a title and it

¹ i.e. the plaintiff or his counsel.

ieo ne fu mie seisi par ceo tittle eynz par autre sesine moy serroit agarde dount de puyz mes qe tittle qe ieo face fut fause et troue fut par la assise qe ieo estoy seisi en la manere qe fut mayntenable par ley il moy suffiroyt pur moun recouerer dount de puyz qe sur la seisine discussion sey frayt atort serroms nous chacez a fayr tittle quel tittle troue fause ne defrait nostre recouerer.

Ing. Lenfaunt est deynz age et est entre com en son heritage et son Ael murust seisi et son pier entra com fiz et heyr et continua et murust seisi apres qy mort il est entre et est issue del pier eyne et vous estes le puyne ou il couient qe vous facez tittle qar la assise le freit pouerement si vous ne sussez faire.

Berr. Fetez vostre tittle.

Scrop. La ou il dit qe Iohan son pier continua seisine il continua mie qar nous vous dionis qe nous estaymes seisi .x. anz en la vie son pier taunke cely et les autres nomez en bref nous disseiserunt.

Willeby. Ditez donke qe nostre auncestre ne murust mie seisi.

Herel. Nous pledoms mie en mortdancestor.

Denom. Si nous pledessoms od lenfaunt si son pier fut eyne ou puyne il a ceo ne pout estre partie dunke a metter ceo en respouns qe ne poet pas estre debatue par la partie del hure qe sur la seisine a qey lenfaunt poet estre partie ceo plee poet prendre fine si serroit il chose desresonable de chacer chose qe targerait cest assise.

Scrop. Si le fiz fut entre apres le deces son pier ceo ne serroit mie chace a tittle eynz soulement excusacioun de tort.

Berr. Oyl mes il prent son tittle de plus haut et continue descent taunke luy.

Et furent aiournez et pus ne prist rien par son bref pur ceo qil ne poeit moustrer tittle.

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Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 123, Norfolk.

Assisa alias apud Theford in Comitatu predicto coram Willelmo de Ormesby Iohanne de Mutford et aliis Iusticiariis ad assisas in Comitatu predicto capiendas assignatis die Iouis proxima post quindenam Pasche anno regni domini Regis nunc septimo venit recognitura si Radulphus filius Iohannis de Magna Massingham Adam le Clerk et Matilda vxor eius Rolandus le feure

were found that I was not seised oy that title but by some other, seisin would be awarded me. Since, then, even though the title I put forward were a bad one, yet if it were found by the assize that I was seised by a title that was maintainable by law, that would be enough for me to get my recovery. Since, then, any discussion as to the seisin would be unprofitable, are we to be driven to lay a title, which, even if it were found to be a bad one, would not bar us from our recovery?

Ingham. The infant is within age, and he entered as upon his inheritance; and his grandfather died seised and his father entered as son and heir and continued [his seisin] and died seised, and upon his death Ralph entered, and he is of the elder line, and you are the younger son, and so you must show a title, for the assize could hardly do so, if you cannot show one yourself.

BEREFORD C.J. Show your title.

Scrope. Whereas he saith that John his father continued his seisin, he did not continue it, for we tell you that we were seised for ten years in the lifetime of his father, until he and the others named in the writ disseised us.

Willoughby. Deny, then, that our ancestor died seised.

Herle. We are not pleading in a mortdancestor.

Denham. If we should plead with the infant as to whether his father was the elder or younger born, he could be no party to that plea. To put, then, into our answer matter which the other side cannot argue, while, on the other hand, this plea must have its issue on the seisin, a question to which the infant can be a party, would be pursuing a matter which could only delay this assize and that would be contrary to reason.

Scrope. If the son had entered after the death of his father that would not be a case where he would be made to show a title, but only to excuse himself of tort.

BEREFORD C.J. Yes, but he taketh his title from a time further back, with descent continued until his own time.

And they were adjourned, and on a later day it was ruled that the plaintiff should take naught by his writ because he could not show a title.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 123, Norfolk.

At other time at Thetford in the aforesaid county, before William of Ormsby, John of Mutford and others, Justices assigned to take assizes in the aforesaid county, an assize came on the Thursday next after the quindene of Easter in the seventh year of the reign of the lord King that now is to make recognition whether Ralph, son of John of Great Massingham, Adam the

Note from the Record—continued.

et Alicia vxor eius Rogerus le Cupere de Westrudham Iohannes filius Petronille Willelmus Prat et Radulphus Share iniuste etc. disseisiuerunt Willelmum filium Walteri de Kemestone de Magna Massingham de libero tenemento suo in Magna Massingham post primam Et vnde questus fuit ibidem quod disseisiuerunt eum de vno messuagio triginta et tribus acris terre cum pertinentiis etc.

Et Robertus filius Iohannis et alii non venerunt ibidem set quidam Henricus de Swafham respondit pro eis tanquam eorum balliuus et dixit quod ipsi nullam iniuriam seu disseisinam ei inde fecerunt Et de hoc posuerunt se super assisam etc. Et predictus Radulphus filius Iohannis qui est infra etatem per custodem suum respondit vt tenens predictorum tenementorum et dixit quod assisa ista inde fieri non debuit quia dixit quod quidam Walterus auus suus obiit seiscitus de predictis tenementis in dominico suo vt de feodo post cuius mortem predictus Iohannes pater suus intrauit in tenementis illis vt filius eius et heres propinquior qui de tenementis illis obiit seiscitus post cuius mortem idem Radulphus intrauit in eisdem tenementis vt filius eius et heres et dixit quod quia predictus Willelmus intrusit se in tenementis predictis super seisinam suam idem Radulphus hoc perpendens ipsum Willelmum recenter amouit sicut ei bene licuit vnde petiit Iudicium si ad capcionem assise predictae procedi deberet in hac parte nisi predictus Willelmus ostenderet titulum liberi tenementi etc.

Et Willelmus dixit quod predictus Iohannes quem predictus Radulphus asserbat intrasse in predictis tenementis post mortem predicti Walteri vt filius eius et heres et inde seiscitum obiisse nunequam fuit seiscitus de tenementis illis Immo dixit quod idem Willelmus toto tempore eiusdem Iohannis fuit seiscitus de tenementis illis vt de libero tenemento suo quousque predicti Radulphus et alii ipsum inde iniuste disseisiuerunt et hoc paratus fuit verificare etc.

Et predictus Radulphus per custodem suum vt prius dixit quod ex quo predictus Willelmus non ostendit aliquem titulum liberi tenementi sui nisi tantum quod paratus fuit verificare seisinam suam de tenementis predictis tempore predicti Iohannis vt de libero tenemento suo petit iudicium si ad capcionem predictae assise procedi deberet etc.

Dies datus fuit partibus de audiendo Iudicio suo apud Norwyche die Iouis proxima ante festum sancte Margarete virginis etc. saluis eisdem partibus etc. Ad quem diem venerunt partes predictae et datus fuit eis dies coram Iusticiariis hic ad hunc diem scilicet a die sancti Michaelis in xv. dies de audiendo iudicio suo etc. Et predictum recordum mittitur hic vna cum breui originali etc. Et modo venit predictus Willelmus filius Walteri et similiter predictus Radulphus filius Iohannis et alii per balliuum etc. Et Willelmus petit quod procedatur ad assisam etc. Et Radulphus ad roboracionem tituli sui predicti dicit ad hec que prius dixit quod predictus Walterus auus suus habuit duos filios videlicet predictum Iohannem patrem ipsius Radulphi filium antenatum et Willelmum filium Walteri qui modo

Note from the Record—continued.

Clerk and Maud his wife, Roland Lefevre and Alice his wife, Roger the Cooper of West Rudham, John, son of Parnel, William Pratt and Ralph Share did unjustly etc. disseise William, son of Walter of Kemston of Great Massingham, of his freehold in Great Massingham after the first [etc.], in respect of which his plaint was that they disseised him of a messuage and thirty and three acres of land with the appurtenances etc.

And Robert, son of John, and the others did not come there, but a certain Harry of Swaffham answered for them as their bailiff, and said that they had done no wrong or disseisin in respect thereof, and of this they put themselves upon the assize etc. And the aforesaid Ralph, son of John, who is within age, answered by his guardian as tenant of the aforesaid tenements, and he said that assize thereof ought not to be, for he said that a certain Walter, his grandfather, died seised of the aforesaid tenements in his demesne as of fee, upon whose death the aforesaid John, the father of Ralph, entered upon those tenements as his son and next heir, and he died seised of those tenements; and upon his death the same Ralph entered upon the same tenements as his son and heir; and he said that because the aforesaid William intruded himself in the aforesaid tenements while he, Ralph, was in seisin, the same Ralph, considering this, did at once eject him, as he was well entitled to do; and he asked judgment thereof whether the aforesaid assize ought in these circumstances to be taken unless the aforesaid William show title to a freehold etc.

And William said that the aforesaid John, of whom the aforesaid Ralph asserteth that he entered upon the aforesaid tenements after the death of the aforesaid Walter as his son and heir and that he died seised thereof, never was seised of those tenements, but he saith that he, this same William, was, during the whole time of the same John, seised of those tenements as of his freehold until the aforesaid Ralph and the others unjustly disseised him thereof; and he is ready to aver this etc.

And the aforesaid Ralph by his guardian as above said that because the aforesaid William doth not show any title to a freehold but saith only that he is ready to aver his seisin of the aforesaid tenements in the time of the aforesaid John as of his freehold, he asketh judgment whether the taking of the aforesaid assize ought to be proceeded with etc.

A day was given to the parties to hear their judgment at Norwich on the Thursday next before the Feast of St. Margaret, Virgin etc., [the right of further argument] being reserved to the same parties; upon which day the aforesaid parties came, and a day was given them before the Justices here upon this day, to wit a fortnight past Michaelmas Day, to hear their judgment etc. And the aforesaid record is sent here together with the writ original etc. And the aforesaid William, son of Walter, cometh, and likewise the aforesaid Ralph, son of John, and the others, by bailiff etc. And William asketh that the assize may be proceeded with etc. And Ralph, in further proof of his aforesaid title, saith in addition to what he said previously that the aforesaid Walter, his grandfather, had two sons, to wit, the aforesaid John, father of this same Ralph, the elder born son, and William, the younger

Note from the Record—continued.

queritur postnatum et dicit quod post mortem ipsius Walteri qui de eisdem tenementis obiit seiscitus in dominico suo vt de feodo sicut predictum est predictus Iohannes filius antenatus et heres etc. intrauit in predictis tenementis et inde obiit seiscitus etc. post cuius mortem idem Radulphus est inde in seiscina vt filius et heres per decensum etc. Et ex quo idem Radulphus qui est infra etatem etc. ostendit titulum ita sufficientem de tenencia sua predicta petit Iudicium si predictus Willelmus priusquam docuerit de titulo ad aliquam assisam attingere debeat etc.

Et Willelmus dicit quod ipse fuit seiscitus de predictis tenementis vt de libero tenemento suo tempore predicti Iohannis patris ipsius Radulphi per annos et dies videlicet per decem annos et amplius et seiscinam suam continuauit quousque etc. que quidem seiscina sibi sufficere debet pro titulo ad hoc breue assise noue disseisine Et super hoc petit assisam etc. maxime cum ipse ostendit seiscinam predicti Iohannis patris etc. quam predictus Radulphus allegat tempore suo fuisse sic interruptam et non continuatam vsque obitum ipsius Iohannis sicut idem Radulphus superius asserit etc.

Et Radulphus dicit quod predictus Willelmus ad assisam suam manutenendam uersus ipsum infra etatem et in seiscina eorundem tenementorum per decensum vt predictum est existentem per hoc quod dicit se ipsum fuisse tantummodo seiscitum et disseiscitum etc. admitti non debet Dicit enim quod cum tenens in huiusmodi breuibz maxime qui infra etatem existit sicut in casu isto facit titulum ita expressum querens si assisa vti velit erga ipsum necesse habet docere de titulo certo ostendendo modum et formam tenencie sue quam habuit in predictis tenementis vnde queritur disseisiri etc. Et ex quo predictus Willelmus seiscinam liberi tenementi non ostendit per aliquem expressum titulum perquisiti seu descensus etc. petit Iudicium sicut prius etc.

Dies datus est eis de audiendo Iudicio suo hic a die sancti Hillarii in xv. dies in statu quo nunc etc. Postea ad diem illum veniant tam predictus Willelmus filius Walteri quam predictus Radulphus in propriis personis suis et alii per ballium suum Et predictus Willelmus requisitus per Iusticiarios si quod titulum habeat seu ostendere velit qualiter liberum tenementum ipsi Willelmo accreuit in predictis tenementis etc. vel si ipse aliquid allegare sciat contra titulum quem predictus Radulphus pro se allegat in hac parte nichil ad hoc respondet etc. Ideo consideratum est quod predicti Radulphus et alii eant in le sine die etc. Et predictus Willelmus nichil capiat per assisam istam set sit in misericordia pro falso clamore suo etc.

7. FURNESS v. CASTLE.¹

Vn bref fust porte vers vn tenaunt a terme de vie et demanda vne terce partie du Maner de P. qe vouche a garauntie et mist auant fet qe launcestre le vouche ly etc. le maner de R. et puis le voucher estut.

Vn bref feust porte vers vn Hawyse de certeinz tenementz en S.

¹ Reported by B.

Note from the Record—continued.

born son of Walter, who now maketh plaint; and he saith that after the death of the said Walter who died seised of these tenements in his demesne as of fee, as is aforesaid, the aforesaid John, the elder born son and heir etc., entered upon the aforesaid tenements and died seised thereof etc., after whose death the same Ralph is in seisin thereof as son and heir by descent etc. And because the same Ralph, who is within age etc. thus showeth a sufficient title to his tenancy, he asketh judgment whether the aforesaid William ought to get to any assize unless he first show a title etc.

And William saith that he himself was seised of the aforesaid tenements as of his freehold in the time of the aforesaid John, father of the same Ralph, for years and days, to wit, for ten years and more, and continued his seisin until etc.; the which seisin ought to suffice as a title in this writ of novel disseisin. And thereupon he asked the assize, especially as he showed the seisin of the aforesaid John, father etc., which the aforesaid Ralph allegeth, was in his time so interrupted and was not continued until the death of the same John, as the same Ralph did assent above etc.

And Ralph saith that the aforesaid William ought not to be received to maintain his assize upon saying naught more than that he was seised and disseised against him, Ralph, that is within age and is in seisin of the same tenements by descent, as is aforesaid. For he saith that when the tenant in writs of this kind, especially when he is under age as in the present case, maketh so clear a title, the plaintiff, if he wish to have the assize against him, is bound to plead a definite title, showing the manner and form of the tenancy which he had in the aforesaid tenements of which he complaineth that he hath been disseised etc. And because the aforesaid William doth not show a seisin of a freehold by any clear title by purchase or by descent etc. he asketh judgment as before etc.

A day was given them to hear their judgment here a fortnight past St. Hilary's Day in the same state in which they are now etc. Afterwards, on that day, both the aforesaid William, son of Walter, and the aforesaid Ralph came in person and the others by their bailiff; and the aforesaid William, being asked by the Justices whether he hath any title or wisheth to show how a freehold accrued to him, William, in the aforesaid tenements etc., or whether he can allege aught against the title which the aforesaid Ralph doth tender in his own behalf in this matter, answereth naught thereto etc. So it is considered that the aforesaid Ralph and the others go hence without day etc. And the aforesaid William is to take naught by that assize, but is to be amerced for his false claim etc.

7. FURNESS *v.* CASTLE.¹

A writ was brought against a tenant for a life term, the claim being for a third part of the manor of P. The tenant vouched to warranty and tendered a deed witnessing that the vouchee's ancestor [had warranted] to her the manor of R. And afterwards the voucher was allowed.

A writ was brought against one Hawise of certain tenements in

¹ See the Introduction, p. xxvii, above.

de la iije partie du maner de Plecy qe voucha a garaunte Robert de Wylubyet vn G. seon parcener come heirs Auntoin de Beek par resoun de reuersioun.

Malm. Par quei nous voucheretz vous.

Denum mist auant fait qe voleit qe Auntoine auit [sic] lesse a mesme cele H. le maner de Rauensle a tenir a tote sa vie et obliga luy et ces heirs a la garaunte vt supra.

Malm. Auant ces heures si auez vous vouche par resoun de reuersioun auxi come recorde veot par qei nous nentendoms mye qe vous poietz demaunder le garaunte par especialte et chaunger la foreine [sic] de vostre voucher.

Hoc non obstante le voucher H. feut receu vt supra.

Herle. Le demaunde est fait vers Hawyse de la iije partie du maner du Plecy et le fait par quai etc. veot le maner de Rauenslee nentendoms mie qe a tiel demaunde luy denoms garauntir.

Denum. Il est verite qe ceo qe Auntoine appella maner de Rauensle en la chartre si feust la iije partie du maner de Plecy et ceo qe feust iije partie deu maner de Plecy ne puit estre en nulle manere le manere de Rauenslee par quai nous nentendoms mye qe vous nosterez de garauntie depuis qe nous voloms auer qe mesme cele dont nous sumes enplede est compris deinz ceste chartre.

Et Postea *Herle Malm.* et *Frisk.* furent chacietz a garauntir et sic fecerunt.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 122d., Hertfordshire and Leicestershire.

Sarra filia Walteri de Furneus per attornatum suum petit uersus Sarram que fuit vxor Walteri de Castello medietatem tercię partis Manerii de Plessys cum pertinenciis que extendit per annum ad quatuor libras et tresdecim solidos vt Ius et hereditatem suam et in quam eadem Sarra que fuit vxor Walteri non habet ingressum nisi post dimissionem quam Walterus de Furneus quondam vir Alicie de Furneus matris prediete Sarre filie Walteri et Aue cuiusdam Walteri de Stoke cuius heredes ipsi sunt cui ipsa Alicia in vita sua contradicere non potuit inde fecit Ade de Crecyngge etc. Et sciendum quod altera medietas eiusdem tercię partis exopatur eo quod predictus Walterus de Stoke particeps etc. alias summonitus ad sequendum simul etc. non sequebatur pro proparte sua etc.

Et Sarra que fuit vxor Walteri per attornatum suum venit Et alias dixit quod ipsa tenet predictam terciam partem ad terminum vite sue ex dimissione Antonii de Bek quondam Episcopi Dunelmensis Et de medietate predicta vocat ad warrantiam Robertum de Wylgheby et Iohannem de Harecurt

S., to wit, of the third part of the manor of Plashes. Hawise vouched to warranty Robert of Willoughby and one G., his parcener, as heirs of Antony of Bek, by reason of reversion.

Malberthorpe. By what do you vouch us?

Denham tendered a deed which witnessed that Antony had leased to this same Hawise the manor of Rennesley to hold for her whole life, and had bound himself and his heirs to the warranty *ut supra*.

Malberthorpe. Before now you vouched by reason of the reversion, as the record witnesseth, and therefore we think that you cannot [now] claim the warranty by a deed and so change the ground of your voucher.

Nevertheless Hawise's voucher, *ut supra*, was received.

Herle. A claim is made against Hawise for the third part of the manor of Plashes, and the deed by which etc. speaketh of the manor of Rennesley. We do not think that we are bound to warrant her upon that claim.

Denham. The truth is that what Antony in the charter called the manor of Rennesley was the third part of the manor of Plashes; and is it not possible for that which was a third part of the manor of Plashes to become in some fashion the manor of Rennesley? Therefore we do not think that you can deprive us of our warranty, since we are ready to aver that the land which is claimed from us is comprised within this charter.¹

And on a later day *Herle*, *Malberthorpe* and *Friskency* were made to warrant, and they warranted.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 122d., Hertfordshire and Leicestershire.

Sarah, daughter of Walter of Furness, by her attorney, claimeth against Sarah that was wife of Walter of Castle a moiety of a third part of the manor of Plashes, together with the appurtenances, which is valued at four pounds and thirteen shillings a year, as her right and inheritance, and into which the same Sarah that was wife of Walter hath not entry save after the demise which Walter of Furness, aforesaid husband of Alice of Furness, mother of the aforesaid Sarah, daughter of Walter, and grandmother of a certain Walter of Stoke, whose heirs these are, whom that Alice could not in his lifetime oppose, made thereof to Adam of Cressing etc. And it is to be known that the other moiety of the same third part is excepted because the aforesaid Walter of Stoke, parcener etc., summoned at other time to sue together with etc., did not sue for his share etc.

And Sarah that was wife of Walter cometh by her attorney, and at other time she said that she holdeth the aforesaid third part for the term of her life by the lease of Antony of Bek, aforesaid Bishop of Durham. And she voucheth to warranty of the aforesaid moiety Robert of Willoughby and John

¹ The argument seems to be that misnomer it were, could not prejudice Antony's misnomer of the manor, if Hawise.

Note from the Record—continued.

consanguineos et heredes predicti Antonii Qui modo veniunt per summonicionem per Willelmum de Mershtone attornatum suum Et petunt sibi ostendi per quod ei warantizare debeant etc.

Et Sarra profert quandam cartam sub nomine ipsius Antonii que testatur quod Idem Antonius dedit et concessit ipsi Sarre Manerium suum de Raunesleye in parochia de Staundone Tenendum eidem Sarre ad totam vitam ipsius Sarre Et obligavit se et heredes suos ad warantiam etc. in forma predicta Et dicit quod predictum manerium de Raunesleye est in predicta villa de Plessys et tertia pars eiusdem manerii de Plessys qualitercunque predictus Episcopus illam nominavit manerium de Raunesleye prout sibi placuit et bene potuit etc. Et petit quod warantizent etc.

Et Robertus et Iohannes bene cognoscunt predictam cartam esse scriptum ipsius Antonii cuius heredes ipsi sunt Et ei warantizant predictam medietatem eiusdem tencie partis manerii de Plessys ad terminum vite eiusdem Sarre secundum formam et tenorem eiusdem carte Et vocant inde ad warantiam Iohannem filium Ade de Crecyngge habeant eum hic a die Sancti Hillarii in xv dies per auxilium Curie Et summoneatur in Comitatibus Norfolcie Suffolcie Essexie Cancie Hertfordie Huntyngdonie Norhamptonie et Bedefordie.

8. ERDINGTON *v.* BURNEL.¹

Henry de Erdyngtone porta vn bref dentre uers Edward Burnel de vn maner et dit qil nauoit entre si noun par vn Rauf Spreyngghose que tynt le maner auantdit a terme qe passe est.

Herle. Sire Edward par eide de ceste court vouche a garauntie vn Rauf Springghose qe serra somouns en tiel Counte de C.

Stonore. Sire Rauf dit qe accioun uers luy ne puisse auer a demaunder ceux tenemenz qar il dit qe vn Henry de Erdyngtone piere mesme cesti Henri qi heir il est enfeffa mesme cesti Rauf de meisne cest maner a tenir de chief seignourage de fee et par mye [ceo] fet et mist auant vne chartre et tut fut ceo qe nous fuissions enplede de vn estraunge il serrait lie a la garauntie par mye ceo fet et demaundoms iugement de puis qil nous serroit lie a la garauntie si nous fuissions enplede de vn estraunge si encontre ceo fet il nous puisse accioun auer.

Serope. Sire coment qil mettunt auant fet simple nous vous dioms qe Henri de Erdyngtone qi heir etc. si lessa cel maner a Rauf Springghose pur L. li. a terme de .xv. aunz et si issi fut qe lauandit

¹ Reported by *D.* For other versions and for the Record of this case see *Year Book Series*, xiii. 234-242.

Note from the Record—*continued*.

of Harcourt, cousins and heirs of the aforesaid Antony, who now come by summons by William of Marston, their attorney, and they ask that that may be shown to them by virtue of which they ought to warrant Sarah etc.

And Sarah doth tender a certain charter made in the name of the aforesaid Antony which witnesseth that the same Antony gave and granted to the same Sarah his manor of Rennesley in the parish of Standon to hold to the same Sarah for the whole life of the same Sarah; and he bound himself and his heirs to the warranty etc. in the form aforesaid. And she saith that the aforesaid manor of Rennesley is in the aforesaid vill of Plashes and a third part of the same manor of Plashes, no matter though the aforesaid Bishop called it the manor of Rennesley, as it pleased him to do and as he was well entitled etc. And she asketh that they shall warrant etc.

And Robert and John admit the aforesaid charter to be the deed of the said Antony, whose heirs they are, and they warrant to Sarah the aforesaid moiety of the same third part of the manor of Plashes for the term of the life of the same Sarah according to the form and tenor of the same charter. And they vouch to warranty thereof John, son of Adam of Cressing. They are to have him here on the quindene of St. Hilary by aid of the Court. And he is to be summoned in the counties of Norfolk, Suffolk, Essex, Kent, Hertford, Huntingdon, Northampton and Bedford.

8. ERDINGTON *v.* BURNEL.¹

Harry of Erdington brought a writ of entry against Edward Burnel of a manor, and he said that Edward had no entry save by one Ralph Springhose who held the aforesaid manor for a term which is expired.

Herle. Sir, Edward, by aid of this Court, voucheth to warranty one Ralph Springhose who will be summoned in the county of C.

Stonor. Sir, Ralph saith that Harry cannot have any action against him to claim these tenements, for he saith that one Harry of Erdington, father of this same Harry, whose heir this same Harry is, enfeofed that same Ralph of this same manor to hold of the chief lord of the fee and by this deed—and he proffered a charter—and if we should be impleaded by a stranger he would be bound to warrant us by virtue of this deed; and, seeing that he would be bound to warrant us if we were impleaded by a stranger, we ask judgment whether he can have any right of action against us against the tenor of this deed.

Scrope. Sir, though the deed which they proffer is unconditional, we say that Harry of Erdington, whose heir etc. leased this manor to Ralph Springhose for fifty pounds for the term of five years on the

¹ For other versions of this case, xiii 224-242. The case is cited in *Rye* and for the Record see *Year Book Series*, v. *Tumby* on p. 38 below.

Henry ne paie pas les L. li. a iour assigne al auantdit Rauf [auantdit Rauf] durreyt a meisme cesti Henry .xviij. li. et tendrait le maner en fee et par ceo fait endente entre eux et mist auant vne endenture que le tesmoigna dedeys quele terme meisme cesti Henry a Saleburis tendit la paie meisme cesti Rauf le refusa et puis nous meismes lauoms tenduz et vncore tendoms et demaundoms iugement si par tiel fet deyuoms estre barre.

Toud. Est ceo vostre fet ou ne mye.

Wilb. Nous grauntoms bien le fet solom la condicioun que nous auoms dit.

Herle. Et nous iugement depuis qil vnt graunte le fet son auncestre que est simple en sei si par nul fet de ceste qest de condicioun puisse cel chartre symple defere.

Berr. Il dient que cele chartre ne les greuera par la resoun que les tenemenz furent lesez come en morgage par endenture et dount il auoit vne chartre fet que si issi fut que les deners ne fuissent mye paieiz al iour assigne que meisme Rauf paierait a Henry .xviij. li. en [sic] tendrayt le maner par mye la chartre mes ore il dit que vous refusastes la paie et issi ad il assigne la defaute en vous par quei il dit que la chartre est voide.

Et furent chacez a respoudre a lescrit de couenaunt non obstante la chartre.

9. RYE v. TUMBY.¹

I.²

Dowere ou le tenaunt voucha a garaunte et mist auant fet que voleit que launcestre le vouche lui auoit enfee en fee simple et obliga etc. le vouche mist auant autre fet condiciounel que si son auncestre ou ses heirs ly paierent .x. li. deinz les .x. aunz que bien lirreit a lui et a ses heirs de entrer etc.

En vn bref de dowere porte vers Iohan de Houby³ que voucha a garaantie Raundoulf⁴ le fitz Randoulf de Ry.

Scrop demaunda par quei.

Malm. myst auant chartre simple que Randoulf de Ry auoit fait a Iohan de Houby⁵ et obliga lui et ees [heirs] a la garaantie.

¹ Reported by *B*, *C*, *D*, *E*, *H* (twice) and *X*. Names of the parties from the Plea Roll. ² Text of (I) from *B* collated with *M* and *X*. The headnote in *X* is: De dote ou le tenaunt voucha a garaantie simplement et le vouche dit que soun escrit fut condicional et moustra escript costeynt. ³ Lynby, *M*; Hoube, *X*. ⁴ Rauf, *M*; Radulphe, *X*. ⁵ *L*, *M*; *H*, *X*.

condition that if the aforesaid Harry did not repay the fifty pounds by the day limited to the aforesaid Ralph, then the aforesaid Ralph should give this same Harry eighteen pounds and hold the manor in fee; and this was agreed by this deed indented between them—and he proffered an indenture in witness thereof—and that same Harry did within the time limited tender the money at Salisbury, and this same Ralph refused it; and since then we ourselves have tendered it and still do tender it; and we ask judgment whether we ought to be barred by that deed.

Toudeby. Is this your deed or is it not?

Willoughby. We are willing to admit the deed along with the conditions we have set out.

Herle. And, seeing that they have admitted the deed of the plaintiff's ancestor which containeth no conditions, we ask judgment whether they can defeat this unconditional charter by any deed containing conditions.

BEREFORD C.J. They tell you that that charter will not prejudice them because the tenements, at the time of the making of the charter, were leased by way of mortgage upon the condition that if the money were not paid on the day assigned this same Ralph should then pay eighteen pounds to Harry and hold the manor in virtue of the charter; and now the plaintiff saith that you refused the money, and thereby he hath assigned such default in you as he saith avoideth the charter.

And, notwithstanding the charter, they were made to answer to the writing of covenant.

9. RYE v. TUMBY.¹

I.

Writ of dower where the tenant vouched to warranty and tendered a deed which witnessed that the vouchee's ancestor had enfeoffed him in fee simple and bound himself etc. The vouchee tendered another deed which contained the condition that if his ancestor or his heirs paid ten pounds within ten years then he or his heirs should be entitled to enter etc.

In a writ of dower brought against John of Humby who vouched to warranty Randal, the son of Randal of Rye:—

Scrope asked by what [he vouched him].

Malberthorpe tendered a charter without conditions which Randal of Rye had made to John of Humby, wherein he bound himself and his heirs to warranty.

¹ See the Introduction, p. xxx above.

Scrop. Par ceo fait ne poetz la garauntie demaunder qe nous vous dioms qe mesme le iour qe ceo fait feust fait si a coueint entre mesme cetuy etc. et vous qe quele heure qil ou ces heirs ou ces executours vous paiassent dd.¹ li. de deinz les x. aunz procheinz ensiwantz apres la confeccioun etc. qe la dite chartre en qi mayns ele feut troue serreit² tenu pur nulle et vous dioms qe les x. aunz ne sount pas vnqore passetz et demaundoms iugement si par tiele fait liuere a vous sur tiel condicioun puysset garauntie simplement demaunder et mist auaunt vn escrit endente qe ceo temoigne.

Fr. Est ceo le fait vostre auncestre ou noun.

Et furent chacez par la Court a ceo respondre.

Denum. Nous ne pouns dedire qe ceo nest le fait nostre auncestre R. et vous dioms³ qe le fait porte date en luy de mesme le iour qe la chartre purporte ⁴et mesme le iour etc. feistes vous⁵ ceste escrit condicional qe testmoigne ut supra. Et prioms qe vous respoyngez si seo soit vere⁶ [*sic*] fait ou noun.

Fr. Nous demaundoms iugement dil hour qe vous auetz conu la chartre qest simple sanz nule maner de condicioun et vous rien ne moustret a defaire ceste chartre forge vn escrit qe parle ⁷de vne condicioun etc⁸ qe nest pas mys en effect et demaundoms iugement.

Scrop. Si⁹ ieo face a vous vne chartre simple et vous liuere la seisine a terme de vie vostre¹⁰ tenaunce serra accordaunte a la liuere qe¹¹ la chartre nest mesqe vn poy¹² denke et parchemyn qe ne deprouera¹³ my ma¹⁴ volunte sur la liuere et nous mettons auant vostre fait demene qe testmoigne qe quelle heure etc.¹⁵ a quel fait vous deuez respondre.

Fr. Lescrit qe vous¹⁶ mettet auaunt proue nostre estat simple auxi come nous auoms vouche qe leserit veot Hee est conuencio¹⁷ etc. quod quidam Randulfus de Ry feoffauit Iohannem de Houby et issi proue leserit qil feust feffe et demaundoms iugement etc.

Scrop. Donqe pledetz vous al escrit et si sie ¹⁸donqe il vous¹⁹ couent conustre Item si ieo garauntasse en la manere come vous mey auet vouche ieo serray ouste de ma terre a toux iours la ou leserit veot qe quele heure qe ieo paye etc. deinz les x. aunz ieo reaueray ma terre et la chartre tenue²⁰ pur nule en qi mayns vt supra et vous ne distes pas qe les x. aunz sunt enqore passetz et demaundoms iugement.

¹ ce., M, X. ² fut, M. ³ X omits. ⁴⁻⁵ si nous feistes, M; si fait vous nous, X. ⁶ vostre, M; le, X. ⁷⁻⁹ X omits. ⁸ M adds quel heure etc. quel condicioun soit. ¹⁰ X adds estat en la seisine [*sic*]. ¹¹ et noun pas, X. ¹² poynt, M. ¹³ desproua, M; desproue, X. ¹⁴ la, X. ¹⁵ M and X add vt supra. ¹⁶ M adds meismes. ¹⁷ condicio, X. ¹⁸⁻¹⁹ il le, X. ²⁰ seit tenuz, X.

Scrope. You cannot claim warranty by this deed, for we tell you that on the same day on which this deed was made it was covenanted between this same etc. and you that whenever he or his heirs or his executors should pay you two hundred and twenty¹ pounds within the ten years next following after the execution etc. the said charter, in whose hands soever it might be, should be void ; and we tell you that the ten years are not yet elapsed, and we ask judgment whether by that deed delivered to you subject to that condition you can claim an unconditional warranty—and he tendered an indented writing in witness of what he said.

Friskney. Is this the deed of your ancestor or not ?

And they were forced by the Court to answer this.

Denham. We cannot deny that this is the deed of our ancestor Randal, and we tell you that the [supplementary] deed beareth on it the date of the same day as that which the charter beareth ; and on that same day you made this conditional writing which witnesseth as above. And we pray that you may answer whether it be your deed or not.

Friskney. We ask judgment since you have acknowledged the charter, which is an unconditional one without any kind of condition, and you show naught in avoidance of this charter save a writing which speaketh of a condition etc. which never took effect etc. ; and we ask judgment.

Scrope. If I make an unconditional charter to you and deliver you the seisin for the term of your life, your tenancy will be as it was limited in the livery ; for the charter is naught but a little ink and parchment which will not avail to over-ride my will at the time of the livery ; and we tender your own deed which doth witness that whenever etc., and to that deed you ought to answer.

Friskney. The writing which you tender proveth our absolute estate, in accordance with our voucher, for the writing saith that this is an agreement etc. that one Randal of Rye enfeoffed John of Hunby, and so the writing proveth that he was enfeoffed ; and we ask judgment etc.

Scrope. Are you pleading, then, to the writing ? And, if you are, you must therefore admit it. Further, if I were to warrant after the form in which you have vouched me I should be ousted from my land for all time, whereas the writing provideth that whenever, within ten years, I pay etc. I shall have my land back, and that the charter shall be void in whose hand soever as above ; and you do not say that the ten years have yet elapsed, and we ask judgment.

¹ Corrected from the Record. The text is corrupt. The other texts give the sum to be paid as two hundred pounds.

Berr. Et si vous luy tendetz les deners vt supra et il les refuse et reteigne la terre solom le purport de la chartre par cas homme veut dire qe vous ne poetz rien auer vers luy mesqe vostre bref de couenant et il est autre¹ en ceo cas qil ne serreyt si² la condicioun³ dount vous parlez⁴ feut mote⁵ en la chartre par la quele il demand la garantie et ieo ne lorrey⁶ iammes a nul de mes amys defere nul tiel couenant.

Scrop. Nous auoms mys auant lur⁷ fet demesne qe testmoigne vne condicioun vt supra⁸ et ouesqe ceo nous voloms auerer qe la seisine feut liuere solun la forme de ceste escrit et demaundoms iugement si garrauntir simplement en contre lescrit qe testmoigne vt supra⁹ pussent demaunder.

Toud. Lescrit ne vous donne iames recouer de terre mes soulement damages a¹⁰ la value de la terre si issi soit qe nous reteignons la terre contre couenaunt et ceo vous dy ieo bien pur lay et demaundoms iugement dil houre qe nous auoms vostre fait et quel vous auez conu qe veot garauntie simple sauntz nule manere de condicioun si vous ne deuiez garrauntir.

Scrop allega la cas H. de Herdington.

Berr. Les cas ne sunt mye semblables qen le cas H. de H. la chartre feut baille a vn frere menour en owel mayn a garder etc. set aliud est hic qe la chartre est simple et sauntz condicioun liuere a luy mesmes.

Scrop. Il rescut les tenementz solom la condicioun mote¹¹ en ceste escrit et demoroms en iugement.

*Scrop Iustice.*¹² Homme ad bien vew en vn vouchier qe le vouche ad garaunti en autre maner qil nad este vouche et sur¹³ ceo¹⁴ entre en la garauntie et fet sa protestacioun¹⁵ salue al vouche seon dreit auxi poetz vous icy entrer en la garauntie et faire vostre protesta-
cioun solom lescrit sil le seoffrent et vostre protestacioun saluera la condicioun.

Malm. Dient ceo qil voillent qe nous voloms auer la garauntie solom ceo qe la chartre veot quele il ount conu.

*Scrop Iustice.*¹⁶ Dunqe conustretz lescrit qil mettent auant ou la court le tendra agraunte qen auncien¹⁷ temps homme soleit faire tieux couenauntz et condiciouns souent¹⁸ et ount este mayntenutz et allegga vn assise de nouele disseisine en le counte de E. de¹⁹ Iohan de fraynche.²⁰

¹ abatre, X. ² a, X. ³⁻⁴ From X; M has dount vn vous parlez.

⁵ note, X. ⁶ lerray, M, X. ⁷ vostre, X. ⁸⁻⁹ X omits. ¹⁰ et, X.

¹¹ note, X. ¹² X omits. ¹³ X has C for sur. ¹⁴ son, M, X. ¹⁵ parte, X.

¹⁶ X omits. ¹⁷ From M and X; B has aquin. ¹⁸ From M; comment, B;

telement, X. ¹⁹⁻²⁰ Philip Farling, X. ²⁰ Farsyngtone, M.

BEREFORD C.J. And if you tender the money to him as above and he refuse it and retain the land according to the purport of the charter, then peradventure it may be said that you have no remedy against him save by your writ of covenant; for it is not the same in the present circumstances as it would have been if the condition of which you speak had been written in the charter by which the tenant claimeth warranty, in which case I would never allow myself to be persuaded by any of my friends to make such a covenant void.

Scrope. We have tendered their own deed which witnesseth a condition as above: and, together with that, we are ready to aver that the seisin was delivered after the form of this writing; and we ask judgment whether they can claim an absolute warranty against the tenor of the writing which witnesseth as above.

Toudeby. The writing doth not give a recovery of the land, but only damages to the value of the land, if so it be that we retain the land against the covenant, and I tell you that certainly as good law; and we ask judgment whether you are not bound to warrant since we have your deed and you have admitted that it provideth for an absolute warranty, without any kind of condition.

Scrope cited the case of H. of Erdington.¹

BEREFORD C.J. The circumstances are not alike, for in the case of H. of E. the charter was given into the neutral possession of a friar minor to keep etc., but here it is different, for the charter is absolute and without any condition and is delivered to the party himself.

Scrope. He received the tenements subject to the condition set out in this writing; and we abide judgment.

SCROPE J. We have certainly seen cases of voucher where the vouchee hath warranted after some form other than that by which he hath been vouched, and hath afterwards entered into the warranty [after the form in which he had been vouched] and made his protestation, saving to the vouchee his rights. So here you can enter into the warranty and make your protestation according to the form of the writing—if they will allow it—and your protestation will save the condition to you.

Malberthorpe. Say they what they will, we desire to have the warranty in accordance with the provision of the charter which they have acknowledged.

SCROPE J. Then admit the writing which they tender or the Court will take it for granted; for in past times men were often wont to make such covenants and conditions and they have been upheld—and he cited an assize of novel disseisin by John de Frayne in the county of E.

¹ See p. 35 above.

Fr. Nous demaundoms la garauntie solom ceo qe le fait veot par quel nous le demaundoms et en autre manere ne la poms auer qar il couent qe nous pursiwoms¹ le fait etc. et vous lauetz conu et demaundoms iugement.

²*Toul.* ad idem. Pur mouer [sic] la court qe nous auoms bone fey ouesqe uous si dioms nous ala court qe mesme celuy R. puyt en nostre seisine relessa et quiteclama et mist auant fait qe ceo testmoigna mes il ne la vsa mye en proue de la garrauntie³ mes en euidence etc. vt supra.

Denum. Depus qe vous ne poetz dedire qe le couenant ne feut tiel come lescrit purporte et la seisine liueret⁴ ut supra nous demaundoms iugement etc.

⁵Et habent diem in xv^a sancti Hillarii etc.⁶

II.⁷

Dowere.

Elianor qe fut la femme Rauf de Rie porta bref de dower vers Ion de Tumby Ion voucha a garauntie Ion fiz et heir Rauf de Rye qe vynt en court et demaunda par qe il ly voucha et il mist auant fet qe voleit garauntie symplement.

Scrope. Nous ne poms dedire le fet mes nous vous dioms qe nostre pere vous lessa lez tenementz a terme de .x. aunz issi qe si il ou sez executours rendreit a vous ou a vos executours ou a vos heirs .c. li. deynz le terme auant dit qe mesmes lez tenementz ensemblement oue la chartre ly deuereit estre delyuere [et] qe la chartre de ceu iour enauant serreit tenu nule en qi meyn qil fut troue et veiez cie lendenture qe le testinoigne et de pus qe vous auez vouche symplement ou vous nauez si noun a terme de aunz si la qe la condicioun seit parfourny demaundoms iugement du voucher.

Mall. Ore demaundoms iugement de pus qe vous auez conu le fet qe veot garauntie symplement par vertu de quel fet nous auoms vouche si encountre ceu fet vous pussez estourtre de la garauntie.

Scrop. Si tenaunt a terme de vie me vouche symplement le voucher serreit nul pur ceo qe il vouche de plus haut qe soun estat nest a ma desheritaunce qe si ieo entre en la garauntie solom le voucher ieo serray

¹ prisoms, X. ² From here to the end of the report X omits. ³ M adds auer etc. ⁴ liuere, M. ⁵⁻⁶ Added from M. ⁷ Text of (II) from C.

Friskney. We claim the warranty in accordance with the tenor of the deed by which we claim it, and we cannot have it in any other way, for we must uphold the deed etc. and you have acknowledged it; and we ask judgment.

Toudeby ad idem. To show the Court that we are acting in good faith towards you, we say to the Court that this same Randal did afterwards, during our seisin, release and quitclaim—and he tendered a deed in proof of it, but he did not use it in proof of the warranty, but in evidence etc. as above.

Denham. Since you cannot deny that the covenant was such as the writing setteth out and that seisin was delivered as above, we ask judgment.

And they have a day on the quindene of St. Hilary etc.

II.

Dower.

Eleanor that was wife of Ralph of Rye brought a writ of dower against John of Tumby. John vouched to warranty Ralph, son and heir of Ralph of Rye, who came into Court and asked by what John vouched him, and John tendered a deed which bound him to unconditional warranty.

Scrope. We cannot deny the deed, but we tell you that our father leased the tenements to you for a term of ten years provided that if he or his executors should pay to you or to your executors or to your heirs a hundred pounds within the term aforesaid the same tenements, together with the charter, were to be delivered to him, and that the charter from that day forward should be held to be void in whose hands soever it might be; and see here the indenture which witnesseth that; and since you have vouched unconditionally where you have only a term of years, in case the condition be fulfilled, we ask judgment of the voucher.

Malberthorpe. Now we ask judgment, since you have acknowledged the deed which provideth for an absolute warranty, and it is by virtue of that deed that we have vouched, whether you can deprive us of our warranty against the purport of that deed.

Scrope. If a tenant for a life term vouch me unconditionally the voucher will be naught, because he voucheth me to warrant to my own disinheritance, which is a higher voucher than his estate entitleth him to have; for if I enter into the warranty in accordance with the voucher I shall be barred forever from my right of action after the

barre daccioun apres la mort le tenaunt a touz iours qe par my la garauntie ieo ly suppose de tel estat cum il m' vouche auxi par de ca il me ad vouche symplement ou son fet nest qe a terme de aunz iugement etc.

Malm. Vostre desheritaunce ne poez dire care lendenture qe nous mettons auant veot qe apres la pay fet la chartre serra tenu pur nule donke il semble qe deuant la pay fet la chartre esta en sa force et deus qe vous ne poez dire qe vous auez la pay fet demaundoms iugement si par cele chartre ne nous deuez garauntir.

Scrop. Coment qe la chartre est symple la liure de la seisine est condiciounel solom lendenture enytre [*sic*]¹ quele condicioun vous nous auez vouche symplement et a nostre desheritaunce iugement etc. Dautrepart la chartre ne put vester en sa nature si la qe la condicioun seit parforny et lez .x. aunz passez donqe deus qe vous ne poez dire qe la condicioun seit parfourny et lez .x. aunz passez quel tens et condicioun durant a nous en fesant la pay nous purroms anentre la chartre demaundoms iugement si par tele chartre anentissable nous poez a la garauntie symplement lyer.

Fr. La chartre est symple et nous en possesioun et cheseun possesioun ad referir a la chartre par qei nentendoms mye qe la lyuere de la seisine seit condiciounele eiytre [*sic*] la fourme de la chartre pussez auerer.

Mall. La chartre qe vous auez conue afferme fee et dreyt en nostre persone par fourme de quel fet nous vous auoms vouche et anentissant cele chartre et nostre dreyt mettez auant vne endenture qe soune en couenant le quel couenant vous ne poez vser deuant la pay fet pur respouns ne par accioun et demaundoms iugement si par nul couenant vse deuant souz tens en anentissant nostre dreyt de la garauntie vous pussez escuser.

Scrop. Si ieo vous face vne chartre en fee et lyuerasse la chartre [*sic*] a terme de vie la chartre se veste mye si noun solom la lyuere de la seisine et ceo est pur ceo qe la chartre nest pas seisine eynz testmoy-naunce de seisine de auerer le reuers de cel temoynance serra bien resceu auxi de ceste parte.

¹ Probably a corrupt form of *enientir*.

death of the tenant, because by the warranty I should be granting that he had in fact that same estate which his voucher assumed that he had. So here; he hath vouched me unconditionally, whereas his deed is only for a term of years. Judgment etc.

Malberthorpe. You cannot talk about being disinherited, for the indenture which we tender provideth that after the payment hath been made the charter shall be void. It seemeth, then, that until the payment be made the charter remaineth of force; and, since you cannot say that the payment hath been made, we ask judgment whether you ought not to warrant us in virtue of this charter.

Scrope. Though the charter be unconditional, the livery of seisin was conditional in accordance with the indenture. Setting at naught that condition, you have vouched us to give an absolute warranty which will have the effect of depriving us of our inheritance. Judgment etc. Further, the charter cannot, by reason of its form, vest the estate until the condition be fulfilled and the ten years passed. Since, then, you cannot say that the condition is fulfilled and the ten years passed, and since, while that time remaineth unelapsed, and the condition thereby unfulfilled, it is open to us, by paying the money, to annul the charter, we ask judgment whether you can bind us to warrant unconditionally by virtue of that defeasible charter.

Friskeney. The charter is unconditional and we are in possession, and every possession is taken to be the possession granted by the charter. We do not think, therefore, that you can aver that the livery of seisin was conditional in defeasance of the form of the charter.

Malberthorpe. The charter, which you have acknowledged, affirmeth fee and right in our person, and after the form of that deed we have vouched you; while you, in defeasance of that charter and of our right, put forward an indenture which soundeth in covenant, which covenant you cannot use either by way of answer or as giving you any right of action until the payment hath been made; and we ask judgment whether by virtue of any covenant, pleaded before you are entitled to rely on it, you can exonerate yourself by the annulment of our right.

Scrope. If I make you a charter giving you an estate in fee and deliver seisin¹ to you for a life term, the charter vesteth no estate in you other than in accordance with the livery of seisin; and the reason of this is that the charter is not seisin but evidence of seisin, and an averment in contradiction of that evidence is properly receivable. So here.

¹ But see the text, where *chartre* is probably a mistake for *seisine*.

Scrop a vn autre iour pria qe saue ly fut la condicioun et il entra [sic] en la garauntie par qei—

Scrop Iustice demaunda sil voleit la garauntie solom la protestacioun.

Toud. Si nous affermassons la protestacioun nous enmeillorassons lour estat en tant com apres la pay fet il nous purreit oster ou auer lour recoueryr vers nous par la ou nul reconeryr lour est salue encountre le fet qil vnt conu.

Scrop. Donqe conissez ceste endenture et pus demoroms en iugement si nous deuoms garauntir symplement ou solom la protestacioun.

Malm. Nous nauoms pas mestre a conustre en ceo plee sil ne fut plee de couenaunt.

Scrop Iustice. Donqe le tenoms agraunte.

III.¹

Dowere.

Cecilie qe fut femme Rauf de la Rie porta bref de douwere vers Iohan de Oumby qe vynt en court et voucha Iohan le fitz Randulf de la Rie qe vynt en court et demaunda par qei il le voleynt lier.

Frisq. Viez cy la chartre vostre auncestre par qei vous estes lie.

Denom. Coment qe vous mettez auaunt la chartre nous vous dioms qe Randulf lessa le maner de T. a mesme cesti Iohan a terme de x. aunz et ly fit vn chartre en ceste forme issint qe sil ou ces heirs paiassent a ly ou a ces heirs CC. li. les queux il apprompta de ly x. aunz dount apres le terme passe la terre retornereit arrere a ly ou a ces heirs et qe la chartre demoreit a mesme cesti Iohan et a ces heirs solom la purporte del escrist et veietz cy vostre fet qe le testmoigne iugement si en la forme com il nous ad vouche deuoms garauntir.

Frisq. Est ceo le fet vostre auncestre et myt anaunt la chartre.

Denom. Est ceo vostre fet et myt anaunt l'escrit qe fut leu et voleit

¹ Text of (III) from *D.*

On a later day *Scrope* prayed that the question of the condition might be saved to him, when he would enter into the warranty. And therefore—

SCROPE J. asked if the tenant were willing to accept the warranty under the protestation.

Toudeby. If we allow the protestation then we are advantaging their estate, inasmuch as, after payment made, he could oust us or have his recovery against us where no right of recovery is reserved to him, against the purport of the deed which they have acknowledged.

Scrope. Then admit this indenture, and we will abide judgment whether we ought to warrant unconditionally or in accordance with the protestation.

Malberthorpe. It is not incumbent upon us to make any admission in this plea as it is not a plea of covenant.

SCROPE J. Then we take it as granted.

III.

Dower.

Cecily that was wife of Ralph of Rye brought a writ of dower against John of Humby, who came into Court and vouched John, the son of Randal of Rye, who came into Court and asked by what John vouched him.

Friskenev. See here the charter of your ancestor by which you are bound.

Denham. Whereas you tender the charter we tell you that Randal leased the manor of T. to this same John for a term of ten years, and made him a charter in this form, to wit, that if he, Randal, or his heirs should pay to John or his heirs two hundred pounds, which he had borrowed of him, within ten years, ¹then after the expiration of the term the land should return back to him or to his heirs, and that the charter should remain with this same John and his heirs in accordance with the purport of the writing²; and see here your deed which witnesseth it. Judgment whether we ought to warrant after the form by which he hath vouched us.

Friskenev. Is this the deed of your ancestor?—and he tendered the charter.

Denham. Is this your deed?—and he tendered the writing, which

^{1,2} There is no sense in this. There are certainly serious omissions and corruptions in the text. What should have been written is easily to be gathered from the other versions of the case.

cum nuper Randulfus de Rie feffaut Iohannem etc. de manerio de T. etc.

Frisq. Vous demaundez par quei nous vous vouchoms nous mesmes [sic] auaunt le fet nostre pere vous auez oye de [sic] fet sur ceo issit den parler et estes reuenuz pur ceo est ceo le fet vostre auncestre ou noun.

Denom. vt supra.

Ber. En dreit de plee veot qe le fet qe primes mys auaunt primes deit estre conu et il vnt mys auaunt le fet vostre auncestre etc. par quei il couent qe vous cousez ou dediez le.

Denom. Nous ne poms dedire le fet mes par cel fet ne deuoms garauntir racione vt prius et myt auaunt lescrist.

Frisq. Ore demaundoms iugement de si com vous auez conu la chartre qest simple en nostre possessioun et en dreit del escrist vous pocz auer bref de couenaunt si accioun eietz iugement si vous ne deuez garauntir.

Scrop. Est ceo vostre fet.

Frisq. Nous nauoms mestre a conustre qe vous auetz conu la chartre qest simple et dit vt supra mes la ou vous parlez de la condicioun en quel est contenu si vous paiassez etc. et vous ne ditez pas qe vous auez paye ne qe vous tendistes etc. ne vngore tendez par quei pur rien qe vous auetz vncore dit la chartre est symple iugement.

Scrop. Si nous garauntissons ore symplement nous serroms barre pur touz iours qe serreit contre son fet demene.

Berr. Moustrez qil deyunt conustre cel fet.

Scrop. Quant home vouche qest desacordaunt a son estat soun voucher est aterre si come tenant a terme de vie et en fee taille vouche simplement saunz mencion fere de lour estat le voucher est abatable ita hic et depuys qil nous ad vouche simplement et lescrist qe nous mettoms auaunt est son fet demene et testmoigne la condicioun noun pas estre tiel com il nous ad vouche par quei il semble qe le voucher est aterre.

Frisq. Lescrist qe vous mettez auaunt veot com feoffasom etc. qe suppose fet precedent solom la forme de la chartre qe nous mettoms auaunt quel vous auetz conu et nul rienz issauntz de condicioun purra estre defeste par quei etc.

Berr. Il vnt conu la chartre ou la condicioun note en lescrist.

was read. And it said that whereas Randal of Rye had lately enfeofed John etc. of the manor of T. etc.

Friskenev. You ask by what we vouch you. We have produced the deed of your father. You have heard the deed read, and you then went out to imparl and you have come back. Now, is this the deed of your ancestor or not?

Denham ut supra.

BEREFORD C.J. The rules of pleading require that the deed that was produced first should be acknowledged first; and they have produced the deed of your ancestor etc., and so you must either admit it or deny it.

Denham. We cannot deny the deed; but we are not bound to the warranty under that deed for the reasons given above—and he tendered the writing.

Friskenev. Now we ask judgment whether you are not bound to the warranty seeing that you have admitted the charter which provideth for our unconditional possession; and on the strength of the writing you can have a writ of covenant, if you have any right of action.

Scrope. Is this your deed?

Friskenev. It is not incumbent upon us to admit it, for you have admitted the charter which is unconditional and provideth *ut supra*. And though you talk about a condition which provideth that if you pay etc., you do not say that you have paid or that you offered etc. or that you still offer, and so, for aught you have said, the charter is unconditional. Judgment.

Scrope. If we were now to warrant unconditionally we should be barred for all time, and that would be contrary to his own deed.

BEREFORD C.J. Show that they are bound to admit this deed.

Scrope. When a man voucheth after a form which is not agreeable to his estate his voucher is bad, as when a tenant for a life term or in fee tail voucheth absolutely without making any mention of what estate he hath, the voucher is abatable. So here. And since he hath vouched us unconditionally and the writing which we tender is his own deed and witnesseth that the condition is not in accordance with the form in which he hath vouched us, it seemeth, therefore, that the voucher is bad.

Friskenev. The writing which you tender reciteth that we enfeofed etc., which supposeth a previous deed after the form of the charter which we produce, which you have acknowledged, and which cannot be defeated by any by-issues as to conditions. Wherefore etc.

BEREFORD C.J. They have admitted the charter with the condition set out in the writing.

Denom. Coment qe nous auons conu la chartre qest simple la seisine put estre condiciounel et a ceo deit home auer regarde.

Toud. Si nous vousisoms dedire lescrist qil mettent auant en ceste et sur ceo ioundre vn auerement serroit ceo issue en ceo plee quasi diceret non qe la curt ne rescueireit pas par qei etc.

Berr. Asaiez si nous voloms estre ceo si vous fuissetz a tel issue et troue fuit nent vostre fet douns vey ieo deux perils dune part.

Scrop. Les paroles et lescrist ne sont for vne testmoinaunce del estat le tenaunt douns la manere de liuere de seisine est principal et ieo pos qe ieo vous face vne chartre symple et ieo vous face la liuere de seisine forqe a terme de vie vous nauez qe frauncement mes ordioms nous coment qe vous mettez auant chartre la liuere de la seisine qest principal fut condiciounel et solom lescrist qe nous mettons auant prest etc. iugement.

Malm. Vous dites mal si ieo sey eynz ieo vous reboteray Dautrepart si vous moy facez vne chartre symple et sur ceo la seisine liuere ieo ne serra iames ouste par nul condicional en ceste.

Berr. Quel tenez vous le dedi plus fort en ceo cas ou la clause de garaunte et si la garaunte seit vn gros par sey ou coment.

Migg. Nous entendons qe cel cas depent dedi.

Scrop. Vous soueynt il del plee de sprugerose la ou il fut chace a respoudre a lescrist par qei etc.

Berr. Il ne sont de rien semblables qe en sprugenrose la chartre fut baille en owel meyn tantqe a certeyn iour etc.

Frisk. Ieo pos qe nous fuissoms ouste de ceste terre nous purroms vser lassise ceo serreit vn autre manere de plee.

Malm. Ieo pos qe ieo a vous face un chartre en tel manere si ieo paye C. s. a tiel iour qe vous puysetz entrer ma terre a tenir a touz iours a quel iour ieo ne vous paye mye si vous entrez etc. ieo recoueray par assise non obstante lescrist et vous serrez a vostre bref de couenaunt etc. et ne recouerer [sic] forqe vos damages par qei etc.

Berr. Voletz vous qil entre en la garaunte sauue a eux lour condicioun solom lour escrist.

Denham. Though we have admitted that the charter is absolute, yet the seisin may be conditional; and regard should be paid to that.

Toudeby. If we wanted to deny the writing which they tender as to this and to join an averment on it, would that be a [receivable] issue in this plea?—*intimating that it would not be*—No; for the Court would not receive it. Wherefore etc.

BEREFORD C.J. See whether we will. Besides, if you were at that issue and it were found to be not your deed, then I see two dangers on the same side.

Scrope. The words of the writing are but evidence of the tenant's estate, of which the manner of the livery of seisin is the decisive fact; and I put the case that I make you an unconditional charter and give you livery of seisin for the term of your life only. You have only a freehold. But now we say that though you produce this charter, yet the livery of seisin, which is the decisive fact, was conditional, and in accordance with the writing which we tender. Ready etc. Judgment.

Malberthorpe. You are wrong. If I be in seisin I can rebut you. Further, if you make me an unconditional charter and thereupon seisin is delivered, I shall never be ejected by any condition imposed upon this.

BEREFORD C.J. Do you hold that the *dedi* is more potent in these circumstances or that the warranty clause is, and that the warranty is a gross in itself, or what?

Miggeley. We think that this case dependeth on the *dedi*.

Scrope. Do you remember the case of Springhose,¹ where he was made to answer to the writing? Wherefore etc.

BEREFORD C.J. The circumstances are not alike, for in Springhose's case the charter was bailed into neutral hands to be kept till a certain day etc.

Friskenev. I put the case that we were ejected from this land. We could have the assize, where the pleading would be after another fashion.

Malberthorpe. I put the case that I make you a charter providing that if I do [not] pay you a hundred shillings by a certain day you can enter my land and hold it for all time. I do not pay you by that day. If you enter etc. I shall recover by assize, notwithstanding the writing, and you will have your writ of covenant etc., and you will recover naught but your damages. Wherefore etc.

BEREFORD C.J. Are you willing that he should enter into the warranty reserving the question of the condition set out in the writing?

¹ See p. 35 above.

Frisq. Nanyl mes nous suffroms volunters qil entre la garaunte salue a eux lour accioun.

Scrop Iustice. Ieo pose qil tendisent a vous les deners et vous les refusez yl semble qe la condicioun tent solom lescrist.

Frisq. Mes qil entre ieo recoueray par assise.

Denom. Coment qe la chartre est symple ieo voil auer qe la seisine fut liueree sour la forme et la condicioun del escrist prest etc. quel auerement vous refusetz iugement.

Scrop Iustice. Il ly auoit vn assise de nouele desseisine en tel cas com vous estes ore porte deuaunt moi et assigna entre qy et pur ceo qil ly tendy les deners et lautre ne le voley receyure il ly ousta et lautre porta lassise et ieo les aiourneray ceinz et fust agarde qil ne prist rien par soun bref par qei etc.

IV.¹

Thomas Dumby [sic] voucha a garauntie Iohan le fuitz Randolf de Rye.

Den. Par qay nous vouchez vous.

Toud. Vostre pere qy heir vous estes nous enfeoffa de ceux tenemenz et obliga luy et cez heirs etc. et veetz si son fet.

Denum. Nous vous dioms qe nostre pere vous lessa ceux tenemenz a terme de .x. aunz et vous liuera la chartre sur cel condicioun qe sil vous payast .cc. livres deynz les .x. aunz qe la terre luy retorneryt et qe la chartre fu tenu pur nule et de ceo mist auant fet qe ceo tesmoigna et desicut lestat qe vous auetz si est a terme daunz a nostre volunte le quel terme vnkor est auenir [iugement] si vous deuetz estre garaunti come de fee simple.

Malb. Nous demaundoms la garauntie par vne chartre qest simple saunz condicioun ou sil iseit nul fet de ceste par qay couenaunt ne seit tenu vostre accioun vous est salue par bref de couenaunt iugement si par nul fet costeyn le quel nous nauoms nye mester a conustre deuetz de ceste garauntie esturtre.

Denum. La chartre et lescrit condicionel furent fet tot a vn mesme temps et la seisine liuere solom purporte del escrit le quel escrit voet

¹ Text of (IV) from E.

Friskenev. No ; but we are quite willing that he should enter into the warranty, saving to him his right of action.

SCROPE J. I put the case that they tender you the money and that you refuse it. It appeareth that the condition set out in the writing would hold.

Friskenev. Even if he enter I shall recover by assize.

Denham. Though the charter be unconditional I am ready to aver that seisin was delivered in accordance with the form and the condition of the writing ; ready etc. ; and you refuse that averment. Judgment.

SCROPE J. There was an assize of novel disseisin brought before me in circumstances similar to yours, and entry was assigned ; but because the defendant had tendered the money and the plaintiff had refused to accept it, the defendant ejected the plaintiff, and the plaintiff brought the assize, and I adjourned them here, and judgment was given that the plaintiff should take naught by his writ. Wherefore etc.

IV.

Thomas Humby vouched John, the son of Randal of Rye, to warranty.

Denham. By what do you vouch us ?

Toudeby. Your father, whose heir you are, enfeoffed us of these tenements and bound himself and his heirs etc. ; and see here his deed.

Denham. We tell you that our father leased these tenements to you for a term of ten years, and he delivered the charter to you under the condition that if he paid you two hundred pounds within the ten years the land should return to him and the charter be held for void—and he proffered a deed which witnessed this—and since the estate which you have is an estate for a term of years at our will, and that term is not yet elapsed, we ask judgment whether you are entitled to be warranted as of a fee simple.

Malberthorpe. We claim the warranty by a charter which is absolute and without any conditions ; and if there be any deed collateral with it containing a covenant that hath not been fulfilled, your action by a writ of covenant is saved to you. Judgment whether you are entitled to free yourself from this warranty by any collateral deed which we are under no obligation to admit.

Denham. The charter and the conditional writing were both made at the same time, and seisin was delivered in accordance with the purport of the writing ; and that writing doth set out and say that

et suppose qe la chartre ne prendra mye sa force auant les .x. aunz et ceo en defaute de la soute la quele soute demoert a nostre volente a paier demaundoms iugement si parmy cel fet deit il estre garaunti qe sil seit garaunti en la manere qil nous ad vouche nous sumes barre a touz iours de reauer cele terre par lescriit condicionel.

Tou. Entrez par le fet vostre pere sauue a vous vostre accioun.

Et pus le vouche paia les deners en pais et le tenant luy deliuera la terre et al iour qil auoit en Court fist defaute le peti Cape retourne a quel iour il fist altre defaute le demaundant pria seisine de terre.

Denum. Les deners sont payes et nous sumes seisi de la terre et prioms qe nul iugement se face sur la defaute le tenant qar ele est seisi de la terce partie de ceux tenemenz en noun de dower et si ele eit iugement sur ceste defaute si auereit ele vnkor vn altre terce partie iugement.

Tou. Nous nauoms rien et prioms iugement sur la defaute qar vous nestes mye partie a nous.

Denum. Seit entre qe vous ne clamez rien et nous . . .¹greoms bien qe vous eetz . . .²

Berr. Nous ne pooms cel entrer en roule fors sil habent iugement sur la defaute.

V.³

Dower.

Crestiene qe fut la feme randolf de Rye porta son bref de dower uers Iohan Tonzby et demaunda la terce partie de .C. acres de terre od les apurtenaunces en Audesley. Iohan viut et voucha a garauntie par aide de la court Iohan le fiz randolf par la chartre son pier qil mist auant qe ceo tesmoygna.

Denum. Vous auez entendu coment Iohan ad vouche com de fee simple Iohan le fiz Randolf vous auez cy Iohan qe vous dit qe com de fee simple ne ly poet il voucher qar il nad en ceo tenementz si noun

¹⁻² A letter or two has been shorn off here in binding the MS. ³ Text of (V) from H (first version).

the charter shall not take effect before the ten years have passed, and then only in default of the payment, which payment we are at liberty to make when we will. We ask judgment whether the voucher is entitled to be warranted in virtue of this deed; for, if he be warranted in accordance with the form in which he hath vouched us, we shall be barred for all time from getting our land back under the conditional writing.

Toudeby. Though we entered by the deed of your father your right of action [under the writing] is saved to you.

And on a later day the vouchee paid the money in the country; and the tenant delivered the land to him, and on the day which he had for appearance in Court made default. The little *cape* [issued and was] returned, and on that day the tenant made default again. The plaintiff¹ prayed seisin of the land.

Denham. The money hath been paid and we are seised of the land, and we pray that no judgment be given on the tenant's default, for the plaintiff is seised of the third part of these tenements in the name of dower, and if she got judgment on this default she would get yet another third part. Judgment.

Toudeby. We have naught and we pray judgment on the default, for you are not privy to us.

Denham. Let it be enrolled that you claim naught and we will readily agree that you have judgment.²

BEREFORD C.J. We cannot enter that in the roll unless they have judgment on the default.

V.

Dower.

Christian that was wife of Randal of Rye brought her writ of dower against John Tumby and claimed the third part of a hundred acres of land, with the appurtenances, in Audesley.³ John came and vouched to warranty, by aid of the Court, John, the son of Randal, by the charter of his father, which he produced, and it witnessed [that John was bound to the warranty].

Denham. You have heard how John hath vouched John, the son of Randal, to warrant him of a fee simple. You have John [the son of Randal] here, and he telleth you that John [the tenant] cannot vouch him to warrant him of a fee simple, for he hath in these tenements

¹ i.e. the plaintiff in the action for dower, in which action the tenant vouched to warranty.

² But see the text.

³ Perhaps Aunsby.

terme de .x. anz et par ceo fete et mist anaunt vne endenture qe ceo tesmoygna qe il auoit en les tenementz terme de diz anz.

Frisqueny. Est ceo le fete vostre auneestre ou ne mie et mustrent anaunt la chartre.

Berr. Est ceo le fete vostre auneestre.

Scrop. Sire oyl mes vous dioms qe Iohan Tunzby presta a Randolf .C. mars et ly lessa ces tenementz a terme de .x. anz et ly baylla eeste chartre en ceste form qe si randolf ou ses heyres ou ses executors paiassent les C. mars deynz les x. anz adunk les tenementz reuertirent a luy ou ses heyres et si il ne ses heyres ne ses executors ne paiassent qe adunk la chartre fut de force et preist effecte et de ceo couenaunt veez cy son fete qe ceo tesmoygne et de puis qe il ne poet auer la condicioun qe fait la chartre de force demaundoms iugement si ceste garauntie simple qe devers nous demaunde par cest chartre qe vnkes ne prist effecte ne fut de value puyz destreyner.

Malb. Et nous iugement del hure qe vous auez graunte le fete simple qe est mis anaunt et ne auez ryen mis countre nous qe est contrarie de nostre chartre simple ne qy defete la garauntie si garauntir ne deuez.

Scrop. Graunt duresce ensuerait si nous garauntissoms qar si luy nous peiossoms ses deners et il nous deforcat apres la terre et nous demaundassoms la terre de luy par bref il nous reboterait issi disaunt qe altre foitz fut il garauntie de nous com de fee simple et demaunderoit iugement si accion poait auer dount nous senble qe tiel duresce cest a dire apert desheritaunce fet a eschuer de puyz qe le fete qe nous mettoms tesmoygne qe la chartre par qey il nous lie ne sait de effecte si la paie sei face deynz le terme de .x. anz qe nest unkor passe.

Denom lur demaunde si le escrit qe tesmoygna le couenaunt fut lur fet ou ne mie.

Malb. Nous nauoms mester a ceo a respounder qar le escrit nest rien en despue ne en defesaunt de nostre garauntie.

Berr. Vous uolez auer de eux cest garauntie par chose qe ne fut pas unkor de force qar si la condicioun ne sait mie siruie duraunt le

only a term of ten years, and this deed witnesseth that—and he produced an indenture which witnessed that John [the tenant] held the tenements for a term of ten years.

Friskenev. Is this the deed of your ancestor or not?—and he tendered the charter.¹

BEREFORD C.J. Is this the deed of your ancestor?

Scrope. Yes, sir; but we tell you that John Tumby lent to Randal a hundred marks, and Randal leased these tenements to him for a term of ten years and bailed to him this charter in the form following, that if Randal or his heirs or his executors paid the hundred marks within the ten years, then the tenements were to revert to Randal or his heirs, and if he or his heirs or his executors did not pay them [within the ten years] then the charter should be valid and take effect; and see here his deed of this covenant which witnesseth it; and since John Tumby cannot aver that the condition² which would make the charter effective hath been fulfilled, we ask judgment whether he can force us to this unconditional warranty which he claimeth from us on the strength of this charter which never became effective nor had any value.

Malberthorpe. And since you have admitted the unconditional deed which hath been produced, and have tendered naught against us in contradiction of our unconditional charter nor in defeasance of the obligation to warrant, we ask judgment whether you are not bound to warrant.

Scrope. Great hardship would follow if we were to warrant, for if we were to pay him his money and he afterwards refused us the land and we claimed the land from him by a writ, he would rebut us by saying that at other time he was warranted by us as of a fee simple, and he would ask judgment whether we could have any right of action against him. It seemeth to us, then, that that hardship, that is to say, our entire disinheritance, ought to be avoided, for the deed which we produce witnesseth that the charter by which he would bind us is not to take effect if the money be paid within ten years, and that time is not yet past.

Denham asked them whether the writing which witnessed the covenant was or was not their deed.

Malberthorpe. We have no need to answer that question, for the writing is not in denial or in defeasance of our warranty.

BEREFORD C.J. You want to get this warranty from them by virtue of something which was never in force; for it is only if

¹ The charter was produced on behalf of the vouchee.
² i.e. the lapse of ten years.

terme qe est a uenyr dunk a deprimis comence la chartre de prendre effecte.

Denom. La possession est nostre com de nostre primer dreyt issi qe frauntenement ne sei uestit vnkes unkor en uostre persone dount si vous fussez ore garauntie de ces tenementz com de fee simple el vous fait fraunc tenement ou uous nel auez nient qar ceo qe estableroit fraunktenement en vostre persone ne prist unkor effecte.

Berr. Home ueit souent garauntie et si ni ad il mie clause de garauntie et garauntie par clause de garauntie.

Migg. La ou clause de garauntie est ceo est incident des principals clauses et nous dioms qe si cest clause de garauntie par qey ils nous vouchent est incident des primers clauses et nentendoms pas del hure qe les primers ne sount de force qe le ne¹ incident qe ne poet chaunger sa nature del principal nous fra garauntir.

Toudeby. Ou ico vous ai disseisi et vous moy face chartre de feffement qe contient clause de garauntie quidez nous de esturte de la garauntie ou il nautoit nunkes riens de vostre doun nanil nent plus en ceo cas.

Denom. Vous ditez talent la chartre fet en disseysine est en leu de quiteclame et issint chescun clause est de force en le cas ou nous sumes nule clause est de force qar le tens ne vint pas unkor.

Malb. Il ni ad home du mounde qe autrement pont auer uouche.

Scrop. Vous ditez talent vous deueriez auer mis auaunt nostre endenture ouesqe nostre chartre et auer fete menciou de vostre estate et en ceste manere eusoms nous garaunti qar de auer garaunti en ceste manere riens nous ont deperie qar si nous poioms le auer nous entroms les tenementz.

Toudeby. Nonn frecz ne iames auerez recouerer si noun par bref de couenaunt a recouerer la value de la tere.

Denom. Vous ditez male si ieo face qe fayre daie et les tenementz entre il nauera iames recouerer par la assise.

Scrop. Ieo vous dirroy ore autre chose si nous entroms ore en cest garauntie en la maner qe il nous vouche nous ne ataindroms iames damages par le bref de couenaunt par la resoun del entre en garauntie sur le simplement vouchen nous acceptoms son estate et issi ne fet il

¹ This *ne* seems wrongly inserted here.

the condition should not be fulfilled in what of the time remaineth unelapsed that then the charter will begin to take effect.

Denham. By reason of our former right we are entitled to recover possession,¹ so that a freehold hath never yet vested itself in your person. If, then, you were warranted of these tenements as of a fee simple, that warranty would give you a freehold where you had not one, for what would vest a freehold in your person hath never yet taken effect.

BUREFORD C.J. We have often seen warranty given where there is no clause binding to warranty, as well as warranty under a warranty clause.

Miggeley. Where there is a warranty clause that clause is merely incidental to the principal clauses ; and we tell you that this warranty clause by which they vouch us is incidental to the previous clauses ; and since the previous clauses are not yet effective, we do not think that the incidental clause which cannot change the character of the principal one will bind us to warranty.

Toudeby. If I have disseised you and you give me a charter of feoffment that containeth a warranty clause, do you suppose that you would be able to avoid the warranty, even in that case where I never had aught by your grant ? No ; and none the more will you in these circumstances.

Denham. You are talking at random. A charter given after a disseisin is instead of a quitclaim, and every clause is, consequently, effective. In the present circumstances no clause is effective, for the time hath not yet come for them [to take effect].

Malberthorpe. There is no man in the world who would have vouched in any other fashion.

Serape. You are talking at random. You ought to have proffered your indenture and our charter and to have said what your estate was, and in that way we would have warranted, for by warranting in that way we should have lost naught ; for if we can have it so we shall save our right of entry in the tenements.

Toudeby. You will not get it, nor will you ever have a recovery save by a writ of covenant to recover to the value of the land.

Denham. You are wrong. If I do what I am entitled to do and enter the tenements he will never get a recovery by the assize.

Serape. Now I will tell you another thing. If we enter now into this warranty in the form in which the tenant voucheth us we shall never get damages by a writ of covenant, because if we enter into the warranty in the terms of this unconditional voucher we admit his

¹ The text is obscure, and the translation given above is conjectural.

mie tort ne countre couenaunt qar nostre accepter aforeceroit son estate de fraunk tenement et de fee sulom la chartre et si le accepter frait la chartre de force nient taunt regarde a la condicioun si paiement si fet ou noun.

Scrop. Nous vaines en autre al tiel cas qe la ou la partie mist le couenaunt countre la chartre nient countre esteaunt qe la chartre fut simple qe il ne fut chace a respondere al couenaunt.

Berr. Si ne fu mie la chartre liuere a luy qy auoit la terre sur la liuere de seisine mes fut done en owel mayne coment qe il la auynt apres.

Scrop. Si ico face vn chartre en fee et liuer la seisine a terme de vie la chartre ne se vest mie si noun sulom la liuerie de seisine et ceo est pur ceo qe la chartre nest pas feffement oynz tesmoygnance et de auer le reners de ceo feffement serray bien resceu.

Scrop a vn altre iour pria qe sauue ly fut la condicioun et il entra [*sic*] en la garauntie.

Scrop Iustice demaunda sil volait la garauntie sulom la protestacioun.

Toud. Si nous affermons la protestacioun nous enmeilleroms lour estate en taunt com apres la paie fet.

VI.¹

Dower.

Vn bref de dower fut porte ou le tenaunt vint en court et dit qe il nauoit en ceus tenementz si noun par la resoun vn randolf de Rie baroun qe sei conoissoit estre tenuz a Iohan Tomby countre qy le bref fut porte en vne certeyn sune de deners par qey Iohan suyt le elegit sibi liberari et issi est il seisi de ceus tenementz et prest est a rendre dower si la court voit qe sait [*sic*] a faire les deners ne fuerunt mie agardez pur ceo qe a les vtanes de saint Hillarie le vicounte de Nichol retourna le bref qe le tenaunt nauoit rien en counte de estre somouns et al tiel retour fit al sicut alias retournable a la quinzeyne de Pasche et issi autre bref a somoundre retournable a la quinzeyne de la Trinite quel iour les parties vindrent en court et pristerent prece parcium

¹ Text of (VI) from *H* (second version).

estate ; and, consequently, [we admit that] he is doing naught wrongful or in contravention of the covenant ; for our acceptance [of the voucher] would confirm him in an estate of freehold and fee in accordance with the charter, and so the acceptance would make the charter effective, without regard to any condition as to the payment or non-payment of the money.

Scope. We saw in another like case¹ that when the vouchee set up the covenant against the charter the tenant was made² to answer as to the covenant, although the charter was an unconditional one.

BEREFORD C.J. Yes, but in that case the charter was not delivered, on the livery of seisin, to him who had the land, but was given into a neutral hand to be handed to the tenant afterwards.

SCOPE J. If I make you a charter in fee and deliver you seisin for the term of your life, the charter vesteth in you naught more than an estate in accordance with the terms of the livery of seisin ; and the reason of that is that the charter is not an enfeoffment, but evidence only ; and you will certainly be received to aver a feoffment at variance with it.

Scope, on another day, prayed that the question of the condition might be saved to him, and then he would enter into the warranty.

SCOPE J. asked whether the tenant would accept the warranty in accordance with the protestation.

Toudeby. If we grant the protestation we are advantaging their estate, inasmuch as after they had made the payment [they would be able to recover the land].

VI.

Dower.

A writ of dower was brought and the tenant came into Court and said that he had naught in those tenements save for the reason that Randal of Rye, husband [of the plaintiff], had acknowledged himself to be bound to John Tunby, against whom the writ was brought, in a certain sum of money, wherefore John had sued the *elegit sibi liberari*, and in that way he is seised of these tenements, and he is ready to render dower if the Court be of opinion that he ought to do. The money was not awarded because on the octaves of St. Hilary the Sheriff of Lincolnshire returned to the writ that the tenant had naught within the county whereby he could be summoned, and he made a like return to the *sicut alias* returnable on the quindene of Easter ; and another writ of summons issued, returnable on the quindene of the Trinity, on which day the parties came into Court and took a *prece parcium* ;

¹ See p. 43 above. ² But see the text where *ne* again seems incorrectly inserted.

et si auoms iour tanke ore par le prece parcium par qey nentendoms pas qe damages deuiant recouerer et non recuperabant dapna [sic] propter le prece parcium set recuperauit dotem saluo creditore residuum tenere quousque len auerit debitum.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 411, Lincolnshire.

Cristiana que fuit vxor Ranulphi de Ry per attornatum suum petit nersus Iohannem de Tumby medietatem duodecim messuagiorum duodecim bouatarum terre quadraginta acrarum prati et Centum solidatarum redditus cum pertineciis in Gosberkyrk Quadring et Donyngtone vt dotem etc. Et Iohannes per Simonem de Bynngtone attornatum suum venit Et alias vocauit inde ad warrantiam Iohannem filium Ranulphi de Ry qui modo venit per summonicionem per Robertum Roter attornatum suum Et petit sibi ostendi per quod ei warrantizare debeat etc.

Et Iohannes profert cartam predicti Ranulphi patris sui cuius heres ipse est que testatur quod Idem Ranulphus dedit et carta sua confirmauit eidem Iohanni de Tumby omnes terras et tenementa redditus et piscarias que et quas habuit in villis de Donyngtone et Quaderyng et omnes villanos eum eorum catallis et sequelis quos habuit in eisdem villis et cum omnibus homagiis wardis releuiis escaetis et cum omnibus libertatibus comoditatibus seruiciis et redditibus liberorum hominum et bondorum et cum omnibus pertinenciis et communis ad predictas terras et villanos quoquo modo spectantibus. Item concessit et dedit predicto Iohanni vnam placeam terre que vocatur Le tachis et duas placeas prati que vocantur Mikilbrond et Littilbrond et iacent tote tres placee terre et prati in villa de Gosberkirk quas quidem terras et tenementa redditus villanos et prata antedicta Richardus Skinnere de Spaldyng de ipso prius tenuit habendos et tenendos predicto Iohanni ac heredibus suis et assignatis suis libere integre imperpetuum de capitalibus dominis feodi illius per seruicia inde debita et consueta et quod idem Raulphus et heredes sui omnes terras et tenementa predicta redditus et piscaria predicta et villanos predictos cum eorum catallis et sequelis et cum omnibus homagiis wardis releuiis escaetis et seruiciis liberorum et Bondorum vt predictum est prefato Iohanni et heredibus suis et assignatis suis contra omnes gentes warrantizabit imperpetuum cuius carte Data est apud Gosberkirk die dominica in vigilia Natalium domini anno regni domini Regis nunc sexto Et dicit quod predicta tenementa vnde predicta Cristiana petit dotem etc. continentur in predicta carta, Et petit quod predictus Iohannes filius Ranulphi ei warrantizet etc.

Et predictus Iohannes filius Ranulphi bene cognouit predictam cartam esse factum predicti Ranulphi patris sui cuius heres ipse est set dicit quod per cartam illam ei simpliciter warrantizare non debet in hac parte Dicit enim quod licet predicta carta simplex fuerit in se seisina tamen predictorum

and so we have a day, on this day, by the *prece parcium*; and we do not think that they ought to recover damages. And they did not recover damages, because of the *prece parcium*; but the plaintiff recovered dower, the residue being saved to the creditor, to hold until he had levied the debt.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 411, Lincolnshire.

Christian that was wife of Ralph of Rye by her attorney claimeth against John of Tumby a moiety of twelve messuages, twelve bovates of land, forty acres of meadow and of a rent of a hundred shillings, with the appurtenances, in Gosberton, Quadring and Donington as dower etc. And John, by Simon of Binnington, his attorney, cometh; and at other time he vouched to warranty thereof John, son of Ralph of Rye, who now cometh by summons, by Robert Roter, his attorney, and he asketh that it may be shown him by what he is bound to warrant John etc.

And John [the tenant] proffereth a charter of the aforesaid Ralph, John's father, whose heir John [the vouchee] is, which witnesseth that the same Ralph gave and by his charter confirmed to the same John of Tumby all the lands and tenements, rents and fisheries which he had in the vills of Donington and Quadring, and all the villeins, together with their chattels and families, which he had in the same vills, and together with all the homages, wardships, reliefs, escheats and all franchises, benefits, services and rents of freemen and bondmen, and together with all the appurtenances and rights of common attached to the aforesaid lands and the villeins in any way regardant to them. He also granted and gave to the aforesaid John a plot of land which is called Le Tachis and two plots of meadow which are called Micklebrond and Littlebrond, all the three plots of land and meadow lying in the vill of Gosberton, which aforesaid lands and tenements, rents, villeins and meadows Richard Skinner of Spalding aforetime held of him, to have and to hold to the aforesaid John and to his heirs and assigns freely and wholly for ever of the chief lords of that fee by the accustomed services due therefrom; and that the same Ralph and his heirs would warrant to the aforesaid John and to his heirs and assigns against all persons for ever all the aforesaid lands and tenements, the rents and fisheries aforesaid and the aforesaid villeins with their chattels and families, together with all homages, wardships, reliefs, escheats and services of freemen and bondmen as is aforesaid; the date of which charter is at Gosberton on the Sunday that was the Eve of Christmas Day in the sixth year of the reign of the lord King that now is. And he saith that the aforesaid tenements of which the aforesaid Christian claimeth dower etc. are comprised in the aforesaid charter. And he asketh that the aforesaid John, son of Ralph, shall warrant him etc.

And the aforesaid John, son of Ralph, did fully acknowledge that the aforesaid charter is the deed of the aforesaid Ralph, his father, whose heir he is, but he saith that he is not bound by that charter to warrant unconditionally in this matter. For he saith that, though the aforesaid charter is

Note from the Record—continued.

tenementorum liberata fuit sub condicione etc. Dicit enim reuera quod tempore confeccionis predictae carte ita conuenit inter eos quod predictus Iohannes de Tumby teneret omnes terras et tenementa predicta ut in carta continentur a die Natalium domini anno domini Regis nunc supradicto vsque ad finem decem annorum proximo sequentium pro ducentis et viginti libris quas predictus Iohannes de Tumby predicto Ranulpho accomodauit tali condicione quod si contingeret ipsum Ranulphum heredes vel executores suos soluere eidem Iohanni heredibus vel executoribus suis in ecclesia parochiali ville de sancto Botulpho infra predictum terminum decem annorum predictas ducentas et viginti libras quod tunc omnes terre et tenementa predicta cum pertinenciis vt predictum est dicto Ranulpho et heredibus suis integre reuerterentur et predicta carta feoffamenti fuisset ex tunc nullius valoris Et si predictus Ranulphus heredes vel executores sui defecissent in solucone dicte pecunie loco et tempore antedictis tunc omnes terre et tenementa predicta cum pertinenciis eidem Iohanni de Tumby et heredibus suis remanerent imperpetuum. Et profert quoddam scriptum quod conuencionem illam testatur in hec verba Nouerint vniuersi quod cum Ranulphus de Ry Miles feoffasset Iohannem de Tumby de sancto Botulpho in omnibus terris et tenementis redditus [sic] et piscariis que habuit in villis de Donyngtone Quaderynge et in villanis suis quos ibidem habuit cum eorum catallis et sequelis et cum omnibus homagiis wardis releuiis escaetis et seruiciis Bondorum et liberorum et in vna placea terre vocata Le Tachys que iacet in Gosberkirk et in duabis placeis prati vocatis Mikilbrond et Litelbrond que iacent in eadem villa prout in quadam carta feoffamenti dicto Iohanni inde confecta plenius continetur conuencio tamen talis est quod predictus Iohannes et heredes sui habebunt et tenebunt omnes predictas terras tenementa redditus piscarias prata villanos cum eorum catallis et sequelis et cum omnibus suis pertinenciis secundum tenorem predictae carte a die Natalium domini anno domini ab Incarnacione millesimo tricentesimo duodecimo vsque ad finem decem annorum proximo sequentium completorum pro ducentis et viginti libris bonorum sterlingorum quas predictus Iohannes dicto domino Ranulpho mutauit sub tali condicione quod si contingat dictum dominum Ranulphum aut heredes vel executores suos soluere predicto Iohanni aut heredibus vel executoribus suis coram probis hominibus in ecclesia parochiali ville de sancto Botulphi infra terminum decem annorum predictorum ducentas et viginti libras sterlingorum antedictas sine vltiori dilacione quod tunc omnes predictae terre tenementa prata villani redditus piscarie et seruicia cum omnibus suis pertinenciis vt prescribitur prefato domino Ranulpho et heredibus suis integre absque vlllo retenemento seu contradiccione reuertenturi. Et earta feoffamenti predicta sit extunc cassa et nullius valoris. Et si predictus dominus Raulphus aut heredes et executores sui defecerint in solucone totius pecunie predictae vel in aliqua eius parte loco et tempore antedictis tunc omnes predictae terre tenementa predicta redditus piscarie

Note from the Record—continued.

unconditional in its form, yet seisin of the aforesaid tenements was delivered conditionally. For in truth, he saith, at the time of the making of the aforesaid charter it was agreed between them that the aforesaid John of Tumby should hold all the lands and tenements aforesaid which are contained in the charter from Christmas Day in the aforesaid year of the lord King until the end of the ten years next following as security for two hundred and twenty pounds which the aforesaid John of Tumby lent to the aforesaid Ralph on the condition that if it should happen that the same Ralph, his heirs or his executors, should pay to the same John, his heirs or executors, in the parish church of the vill of Boston within the aforesaid term of ten years the aforesaid two hundred and twenty pounds, then all the lands and tenements aforesaid, with the appurtenances, as is aforesaid, should revert in their entirety to the said Ralph and his heirs, and the aforesaid charter of feoffment should be void from that time; but if the aforesaid Ralph, his heirs or executors should fail to pay the said money in the place and within the time aforesaid, then all the lands and tenements aforesaid, with the appurtenances, should remain to the same John of Tumby and his heirs for ever. And he tendereth a certain writing which witnesseth that agreement in the words following: Let all people know that when Ralph of Rye, knight, enfeoffed John of Tumby of Boston of all the lands and tenements, rents and fisheries which he had in the vills of Donington and Quadring and of his villeins which he had in the same places, with their chattels and families, and of all homages, wardships, reliefs, escheats and services of bondmen and freemen and of a plot of land called Le Tachys which lieth in Gosberton and of two plots of meadow called Mickiebrond and Littlebrond which lie in the same vill. as in a certain charter of feoffment made thereof to the said John is more fully set out, it was further agreed as followeth: that the aforesaid John and his heirs shall have and shall hold all the aforesaid lands, tenements, rents, fisheries, meadows, villeins with their chattels and families, together with all their appurtenances according to the tenor of the aforesaid charter from Christmas Day in the one thousand three hundred and twelfth year from the Incarnation of the Lord until the end of the ten complete years next following for the two hundred and twenty pounds of good sterling money which the aforesaid John lent to the said lord Ralph, upon this condition, that if it happen that the said lord Ralph or his heirs or executors pay to the aforesaid John or to his heirs or executors in the presence of credible persons in the parish church of the vill of Boston within the term of the aforesaid ten years the aforesaid two hundred and twenty pounds of sterling money without further delay, then all the aforesaid lands, tenements, meadows, villeins, rents, fisheries and services, together with all their appurtenances, as is afore written, shall revert to the aforesaid lord Ralph and his heirs in their entirety without aught being held back or any opposition made. And the aforesaid charter of feoffment shall then be annulled and be void. And if the aforesaid lord Ralph or his heirs or executors shall fail to pay the whole of the aforesaid money or any part of it at the aforesaid place and time, then all the aforesaid lands, aforesaid tenements, rents, fisheries

Note from the Record—continued.

et villani cum eorum catallis et sequelis et cum omnibus homagiis wardis releuiis escaetis et omnibus seruiciis liberorum et Natiuorum et cum omnibus suis pertinenciis secundum tenorem predictae carte dicto Iohanni et heredibus et assignatis suis remaneant et existant imperpetuum. In cuius rei testimonium sigilla predictorum domini Ranulphi et Iohannis huic Indenture alternatim apponuntur. Data apud Gosberkirk die et anno supradictis Hiis testibus Roberto del Hay de Wyketoft Iohanne Hodyl seniore Ranulpho Dunfoul de Gosberkirk Ricardo Busse de eadem Rogero de la Gotere de Sancto Botulpho et aliis. Et dicit quod ipse paratus est warantizare secundum formam et condicionem predicti scripti quod est eiusdem Date cuius est predicta carta et per quod scriptum et condiciones eiusdem seisina predictorum tenementorum liberata fuit predicto Iohanni de Tumby per predictam cartam et hoc pretendit verificare et petit Iudicium si Idem Iohannes de Tumby contra conuencionem predictam simpliciter warantizari debeat etc.

Et Iohannes de Tumby dicit quod ex quo predictus Iohannes filius Ranulphi superius cognouit predictam cartam per quam predictus Ranulphus dedit predicta tenementa cum pertinenciis ipsi Iohanni de Tumby tenenda sibi et heredibus suis simpliciter et absque condicione et eodem modo obligauit se et heredes suos ad warantiam etc. ac idem Iohannes de Tumby per idem simplex factum sit in seisina de predictis tenementis petit Iudicium si de huiusmodi statu simplici warantizari non debeat maxime cum predictum scriptum ad quod non habet necesse respondere non improbat Immo potius feoffamentum illud testatur.

Dies datus est eis de audiendo Iudicio suo hic in Octabis sancti Hillarii in statu quo nunc etc. Idem dies datus est predictae Cristiane etc. Postea ad diem illum venit predicta Cristiana per Hugonem de Thurleby attornatum suum [et] optulit se iij. die versus predictum Iohannem de Tumby de predicto placito etc. Et ipse non venit Et habuit inde diem hic ad hunc diem¹ vt patet superius postquam comparuit in Curia etc. Iudicium predicta medietas capiat in manum domini Regis Et ipse summoneatur quod sit hic a die Pasche in xv. dies auditurus inde Iudicium suum etc.

¹ sc. a month after Michaelmas.

Note from the Record—*continued*.

and villeins with their chattels and families, together with all homages, wardships, reliefs, escheats and all services of free men and naifs, and all their appurtenances, according to the tenor of the aforesaid charter, shall remain and be to the said John and his heirs and assigns for ever. In testimony of which the seals of the aforesaid lord Ralph and John are alternately affixed to this Indenture. Dated at Gosberton on the day and year aforesaid in the presence of these witnesses: Robert of the Hay of Wyketoft, John Hodyl the elder, Ralph Dunfoul of Gosberton, Richard Busse of the same place, Roger of the Gutter of Boston and others. And he saith that he is ready to warrant according to the form and condition of the aforesaid writing which is of equal date with the aforesaid charter, in accordance with which writing and the conditions of the same seisin of the aforesaid tenements was delivered to the aforesaid John of Tumby by the aforesaid charter; and he doth offer to aver this, and he asketh judgment whether the same John of Tumby is entitled to be warranted unconditionally against the aforesaid covenant etc.

And John of Tumby saith that because the aforesaid John, son of Ralph, hath above acknowledged the aforesaid charter, by which the aforesaid Ralph granted the aforesaid tenements with the appurtenances to this same John of Tumby to hold to himself and to his heirs absolutely, and without any condition, and in the same way did bind himself and his heirs to the warranty etc. and because the same John of Tumby is in seisin of the aforesaid tenements by the same unconditional deed, he asketh judgment whether he be not entitled to be warranted of such an unconditional estate, especially since the aforesaid writing, to which it is not incumbent upon him to answer, doth not disprove but rather, on the contrary, witnesseth to that feoffment.

A day is given them here to hear their judgment in the octaves of St. Hilary in the state in which they now etc. The same day is given to the aforesaid Christian etc. Afterwards, on that day, the aforesaid Christian cometh by Hugh of Thurlby, her attorney, and she offered herself on the fourth day against the aforesaid John of Tumby of the aforesaid plea etc. And he doth not come. And he had a day thereof here on this day, as appeareth above, after he appeared in Court etc. Judgment: the aforesaid moiety is to be taken into the hand of the lord King, and John of Tumby is to be summoned to be here on the quindene of Easter to hear his judgment thereof etc.

10. WALSHAM v. WALSHAM.¹I.²

Forme Doun en le descendre ou le tenaunt mist auant fyn qe voleit qe vn N. graunta etc. a Iohan le pierre I. qe ore demande et a vne Alice sa femme a terme de lor .ij. vies et apres lor desces a I. qe ore demande en fee taille et dist qe I. fuist denz age et pria qe etc. et puis mist auant autre fyn qe proua qe I. pierre le demandaunt auoit fee simple par qe i entrenter les fitz il auendra mie a le auerement qe les tenementz furent donez en fee taille etc.

Nicholas le fitz Iohan de Walsam porta bref deforme de Doun³ en le descendre⁴ vers Alice qe feut la femme Iohan de Walsam⁵ et demanda le maner de Walsam forpris .iij. acres de terre etc. et dist qe vn Roger de W. feut seisi etc. et dona a Iohan son pier et a les heirs de son corps⁶ etc. par quel doun il feut seisi etc. et prist les esplez etc.⁷ Et les queux a cesti Nicholas deuient descendre com a fitz etc.⁸

Caunt. ⁹Cesti qe porte le bref est enfaunt deinz agee par qe a cesti bref de dreit durant son noun age ne deit il estre resceu¹⁰ qar nous vous dioms¹¹ qe auant ces hours vne fyn se leua deuant Siere I. de Metyngham tiel terme¹² de mesme les tenementz entre Iohan de Walsam et Alice sa femme vers qi le bref est ore porte et vn Nicholas le Chapeleyn deforcient sur bref de couenant ou mesme ceux Iohan et Alice conussent le maner etc. estre le dreit Nicholas come ceo qil auoit de lour doun et pur ceste reconissance Nicholas graunta et rendi mesme le maner a Iohan et a Alice sa femme a terme de lour dieus vies a tenir du chef etc. et apres lour deces qe le maner remayndreit a Nicholas¹³ le fitz Iohan¹⁴ qore demande et a les heirs de son corps issauntz¹⁵ et sil deuiait etc. qe le maner remayndreit a Alice etc. a toux iours et¹⁶ veez icy la¹⁷ fyn qe ceo testmoigne iugement si durant vostre noun agee depus qe la fyn proue qe vostre pierre ne morust pas seisi de autiel estat come vous demandetz¹⁸ deuez a tiel bref estre respoundu.¹⁹

¹ Reported by *B, C, D, E, H, M.* and *X.* Names of the parties from the Plea Roll. ² Text of (I) from *B* collated with *D* (to a certain point), *M* and *X.* The headnote in *X* is:—Forma donacionis en le descendre par enfaunt dedeinz age ou le

tenaunte mist auant fyn qe tesmoigna le remeindre a lenfaunt apres la mort etc. ³⁻⁴ Supplied from *M* and *X.* ⁵⁻⁶ de certainz tenementz en *E.* et counta qe vn

Roger fut seisi etc. et dona a Iohan son pere etc. a auer et tenir etc. et les heirs de son corps issauntz par quel doun il fut seisi etc. par la forme etc. de *I.* descendi a luy come etc., *M* and *X.* ⁶⁻⁷ engendrez, *D.* ⁹⁻¹² A ceo bref de forme de doune duraunt vostre nounage ne deuez estre resceu qe nous vous dioms qen le

terme de seint Michel etc. se leua vne fyn, *M, X.* ¹⁰⁻¹¹ par la resoun, *D.* ¹²⁻¹⁴ Added from *M* and *X.* ¹⁵ engendrez, *M, X.* ¹⁶⁻¹⁷ mist auant, *M, X.*

¹⁸⁻¹⁹ From *M* and *X;* *B* has etc.

10. WALSHAM v. WALSHAM.¹

I.

Formedon in the descender, where the tenant tendered a fine which showed that one N. warranted etc. to John, the father of J., that now claimeth, and to one Alice his wife for the term of their two lives, and, after their death, to J., the present claimant, in fee tail; and he said that J. was within age and he prayed etc.; and afterwards he tendered another fine which proved that J., the father of the claimant, had a fee simple and therefore the sons entered. He will not get to an averment that the tenements were [originally] granted in fee tail etc.

Nicholas, the son of John of Walsham, brought a writ of formedon in the descender against Alice that was wife of John of Walsham, and he claimed the manor of Walsham with the exception of three acres of land etc., and he said that one Roger of Walsham was seised etc. and gave to one John, the father [of the claimant], and to the heirs of his body etc.; in virtue of which gift John was seised and took the esplees etc.; and the tenements so granted ought to descend to this Nicholas as son etc.

Cambridge. He who bringeth the writ is within age, and therefore he ought not to be received to this writ of right during his nonage; and we tell you that before now a fine in respect of these same tenements was levied under a writ of covenant before Sir John of Mettingham in a certain term between John of Walsham and Alice his wife, against which Alice this writ is now brought, and one Nicholas the Chaplain, deforcient, in which these same John and Alice recognised the manor etc. to be the right of Nicholas, as that which he had by their gift; and in consideration of this recognition Nicholas granted and surrendered the same manor to John and to Alice his wife for the term of their two lives, to hold of the chief etc.; and after their death the manor was to remain to Nicholas, the son of John, that now claimeth, and to the heirs of his body issuing; but if he should die etc. then the manor was to remain to Alice etc. for ever; and see here the fine which witnesseth this. Judgment whether, during your nonage, you ought to be answered under such a writ, seeing that the fine proveth that your father did not die seised of such an estate as you are claiming.

¹ See the Introduction, p. xxxii above.

Scrop. ¹Lestatut veot qe meynテナant apres la mort celuy a qui les tenementz furent doniez etc. descendent a son heir sil eit issue si noun retornent a donour et a ses heirs mes si le plee targast ore tanqe a nostre agee ceo serreit encountre statut qe dist statim post etc. Et dautre part statut veot qe si finis super huiusmodi tenementum leuetur ipso iure sit nullus etc.²

³*Herle.* ⁴La ou vous distes qe lestatut veot mayntenant⁵ etc. ad eorum exitum vel ad donatorem vel ad eius heredes issint qe par cele parole statim est auxi bien la reuersioun salue au donour en ceo cas qant le feffe murst [*sic*] sauntz heir com ⁶al heir en la taille⁷ mes ieo pose qe le heir le donour feut a demaunder etc. par bref en le reuerti et fust deynz agee il ne serroit pas respondu duraunt seon noun agee.

Scrop. Ieo dy qe celui en le reuerti serra respondu deynz agee.⁸

Scrop Iustice. Vostre respouns amoute ataunt qen cas ou bref de formededoun luy seruereit⁹ en lieu daccioun possessorie il serra respondu deynz agee et en cas ou il ne pust neynt servir en lieu daccioun possessorie come si launcestre ne murst pas seisi il ne serra my respondu deinz age.

Toud. Sil feut de pleyn agee il luy couendreit deselamer en la reuersioun.

Herle. Nous ne clamoms rien en ceux tenementz forqe terme de vie et la reuersioun a luy et issi ne clamoms rien a sa disheritance ou par cas si nous clamassoms fee etc. autrement serreyt qe en tieu cas par aventure il serroit reseu dauerer la forme. *Item* ieo pose qe il feut respondu duraunt seon noun agee et qe nous vouissons dedire la forme et pays se ioynsit etc. et passa¹⁰ encountre luy vneore auereit il reconerer par le remayndre taylle en ceste fyn¹¹ qe nous metoms auant et issint ly durreit la court plee sur plee et durreit .ij.¹² acciouns³ a vne mesme persoun dun mesme tencement qe serreit inconuenient de lay ou sil feut de pleyn agee auant ceo qil serroyt reseu a la forme il couendreit deselamer en la reuerecioun.

Berr. Homme ad bien vew qe vne assise de nouele disseisine ad

¹⁻² Le statut proue qe nous deuoms estre respondu qe voet *quod statim post mortem illorum de quibus etc.* et si nous deioms delaye pur nostre nounago lestatut nest pas serui. From *D.* *M* and *X* omit. ³ From this point *D* ceases to be collatable with *B*, *M* and *X*. For the continuation of the *D* text see (II) below.

⁴⁻⁵ Lestatut vous doune deus desioyntis statim, *M*, *X*. ⁶⁻⁷ From *M* and *X*; en le heir den la descende, *B*. ⁸ *M* and *X* add cuius contrarium videtur termino Trinitatis anno duodecimo. ⁹ sert, *M*; serreit, *X*. ¹⁰ passat, *M*, *X*. ¹¹ forme, *X*. ¹² diuers, *X*; *M* omits. ¹³ accioun, *M*.

Scrope. The statute¹ provideth that immediately after the death of him to whom the tenements were given etc. the tenements shall descend to his heir, if he leave issue ; and, if he do not, that they shall revert to the donor and to his heirs ; and to delay this plea until our full age will be contrary to the intention of the statute which saith immediately after etc. And furthermore the statute provideth that if a fine be levied of such a tenement it shall be void in law etc.

Herle. Whereas you say that where the statute provideth that immediately etc. the land is to descend to the donee's issue or [failing such issue] to revert to the donor or to his heirs, [we say that] the word ' immediately ' applieth equally to the reversion to the donor in the case where the feoffee dieth without heir as to the descent to the heir of the tail ; and I put the case to you of the heir of the donor claiming by a writ in the reverter while he was within age. Would he not be answered during his nonage ?

Scrope. I agree that one so claiming by a writ in the reverter would be answered while he was within age.

SCROPE J. Your answer cometh to this, that in circumstances in which he might avail himself of a writ of formedon instead of a possessory writ he will be answered while he is within age, but in circumstances in which he could not avail himself [of a writ of formedon] in place of a possessory writ—as, for instance, in case the ancestor did not die seised—he will not be answered within age.

Toudebv. If he were of full age he ought to disclaim [all right] in the reversion.

Herle. We claim naught in these tenements beyond a life term granting that the reversion is in the claimant ; and so we claim naught that goeth to his disinheritance ; but if it happened that we were claiming fee etc., then it would be otherwise, and in that case he might, perhaps, be received to aver the form. Again, suppose that he was answered during his nonage and that we wanted to deny the form and that issue was joined etc. and a verdict found against him, he would still have an action to recover in virtue of the remainder tailed in this fine which we tender ; and so the Court [if it allow him to be answered now] would be giving plea upon plea, and would be granting two actions in respect of the same tenement to one person, which would be against the law ; but, if he be of full age before he is received, then he will have to disclaim [all right] in the reversion.

BEEFORD C.J. We have seen cases where an assize of novel

¹ Statute of Westminster II. cap. i.

The version in *D* is continued in (II)

² From this point the version given by *D* ceases to be collatable with *B*.

below.

done fraunctenement par vn title et latteinte porte et tiel title troue faux¹ et fraunctenement done par vn autre title et si ad celuy qe recouery tenu en pees sic hic.

Herle. Nest my maruaille pur la nature de bref qest a trier fraunctenement par quel title qil soit.

West. Nous auoms dieux choses en le statut qe nous eydunt lun qe veot quod statim etc. ad eorum exitum vt supra vn autre qe tut soit fyn leue etc. qe la fyn soit nule et vous ne allegget nul autre rien mesqe vne fyn etc. qest tut entre estraunges etc. leuee ou lestatut veot qe fyns soient nuyls et demandoms iugement.

Malb. Vncore ne deyt il estre respoundu qe nous vous dioms qe vn Roger par fyn leue en ceste court etc. conisseit mesme les tenementz contenuz etc. et quore sunt en demaunde a mesme celuy Iohan son pere cum ceux qil auoit de seon doun et pur cele reconissaunce etc. Iohan graunta et rendi mesme les tenementz a Roger et a Isabel sa femme a auer et a tenir etc. a tote lour vie et apres lour desces qe les tenementz retornent a Iohan et a ses heirs a tener de chief seignour etc. et issint proue la fyn fee simple en la persoun Iohan et celuy Nicholas qore demaunde est heir lun et lautre qe Roger feust son ael etc. et demaundoms iugement si durant vostre noun agee etc. et contra finem.

Scrop. Nous voloms auer la forme etc. et si vous voillezt vsr² vostre respouns al accioun pledetz ceo *Item*³ la fyn proue vn doun precedent et nous voloms auer le doun en forme tayle *vt supra*.

Berr. Quantqe vous pledes des fynz etc. si pust estre vn collusioun⁴ fait puis les tenementz donez *vt supra* et si ceux fyns fussent mayntenez lestatut serueroit de poy. *Item* vous nauietz rien dist enqore a qei il ne pust estre partie par qei respoundez.

*Scrop.*⁵ mist auant fait a la court qe testmoigna la forme et ouesqe ceo il tendi lauerement qe les tenementz furunt donez etc. par la forme etc. *vt supra*.

Malb. allegga ambedieus les fyns etc. *vt supra* nentendoms mye qencountre les fyns qe sunt de record et qe prouent fee simple deuiez estre respoundu.

¹ nulle, X.

² Supplied from M and X.

³ *Inge*, M.

⁴ Supplied from

M and X.

⁵ *Malb.* M, X.

disseisin found a freehold by a certain title, and then, when an attaint was brought, this title was found [by the jury of the attaint] to be a false one and a freehold was awarded upon some other title ; and so the claimant who had recovered [in the assize] retained quiet possession. So here.

Herle. That is natural enough, for the purpose of the writ [of novel disseisin] is to find whether a man has a freehold, no matter by what title.

Westcote. There are two things in the statute which help us. One of these is the provision that immediately etc. to their issue *ut supra*. The other is that though a fine be levied it shall be void. And you rely upon naught else than a fine, a fine by parties between whom and us there is no privity, and levied in circumstances which make it void by the statute. We ask judgment.

Malberthorpe. Yet for another reason he ought not to be answered ; for we tell you that one Roger by a fine levied in this Court etc. recognised that the same tenements comprised in etc., being those which are now claimed, were the right of this same John his father, as his in virtue of the gift of Roger ; and in consideration of that recognition etc. John granted and surrendered the same tenements to Roger and to Isabel his wife to have and to hold etc. for their whole lives, and after their death the tenements were to revert to John and his heirs, to hold of the chief lord etc. The fine, therefore, proveth that the fee simple was in the person of John ; and this Nicholas who now claimeth is the heir of both John and Roger, for Roger was his grandfather etc. ; and we ask judgment whether during your nonage and contrary to the tenor of the fine etc.

Scrope. We will aver the form etc. and if you want to use what you say in answer to the action, plead it. Further, the fine proveth that there was a gift precedent, and we will aver that the gift was tailed in the form *ut supra*.

BEREFORD C.J. Whatever you may plead as to fines etc. there is always a possibility of collusion after the gift of the tenements *ut supra* ; and, if these fines were to be upheld, the statute would be to little purpose. Further, you have as yet said naught in reply to the allegation that [the claimant] cannot now be heard, and therefore reply to that.

Scrope tendered to the Court a deed which witnessed the form, and together with that he offered to aver that the tenements were given etc. by the form etc. *ut supra*.

Malberthorpe relied upon both the fines etc. *ut supra*. We contend that you ought not to be answered in face of the fines which are of record and prove a fee simple.

Scrop. Seez auoue.

Toud. L'excepcioun est en lay et si la court veie qe vous deuiez estre respoundu nous respoundroms assetz.

Scrop Iustice. Vostre resoun amounte ataunt qe vostre entente est qencountre la fyn qest de Record et qe proue fee simple a tiel accioun ne deiuent estre respoundu.

Scrop. Nous auoms mys auant fest qe testmoigne la forme ¹et ouesqe ceo² tendoms lauerement *vt supra* et prioms qe vous recordetz qil le refusunt.

Herle. Nous le refusoms mye mes en tile [*sic*] manere si la court voie qe lauerement gise nous dirroms assietz.

Scrop. La court nagardera³ iames quele issue vous prendretz.

Bcrr. Il vous plede mult fort qar il met auant fait qe testmoigne la forme et tende lauerement ouesqe par qei si vous voillietz demorer sur ceo qe vous auietz dist demoret.

Fr. Nous demoroms en tiel manere qe nous nentendoms mye qencountre la fyn qest de recorde qe proue *vt supra* et si vous veiez⁴ *vt supra* nous vous dirroms assietz.

Toud. Ceo serroit vne meruaille en lay de terre qe homme aueroit fee simple et fee taille a vn mesme temps de vn mesme tenement qe auxi naturelement qe ore est resceu en mordancestre a dire qe launcestre de qi seisiue etc. nauoit forge fee taille etc. auxi naturel respouns est ceo en vne forme de Doun a dire qe launcestre ⁵de qy seisiue⁶ etc. auoit fee simple par quei dil heure qe nous mettons auant fyn qe proue *vt supra* nentendoms mye qe a nul auerement deiuetz auenir encountre la fyn.

Scrop. Si nostre auncestre eust pris reles de celui qe donna ne eussoms pas eu nostre recouerir par la forme.

Toud. Ieo croy qe noun ⁷en tiel cas il ad fee simple cant regard a les heirs collaterals et fee taille a les heirs en la descende.⁸

Berr. Il plede plus fort qe sil ne ust eu rien qe vent.

Toud. Sil feust de pleyn agee il naureit pas cel auerement encountre la fyn et si la fyn feut conu nous demoroms en iugement et est deinz age et ne pust rien conustre.

¹⁻² From *M* and *X*; *B* has ouesqe only. ³ regardera, *M*. ⁴ From *M* and *X*; poetz, *B*. ⁵⁻⁶ Added from *M* and *X*. ⁷⁻⁸ Supplied from *M* and *X*.

Scrope. Get yourselves avowed.

Toudeby. The exception is on a point of law,¹ and if the Court be of opinion that you ought to be answered, we will give you a sufficient answer.

SCROPE J. What you say amounteth to this, that in your opinion they ought not to be answered in an action of this kind in the face of a fine, which is of record, proving fee simple.

Scrope. We have tendered a deed which witnesseth the form, and at the same time we offer to aver *ut supra*, and we pray that you will record that they refuse to accept the averment.

Herle. We refuse it only in the form in which you offer it. If the Court be of opinion that the averment lieth, we have a sufficient answer.

Scrope. The Court will never direct you as to what issue you shall take.

BEREFORD C.J. He hath a strong case against you, for he tendereth a deed witnessing the form, and at the same time he offereth an averment. But if you wish to abide judgment on what you have said, abide it.

Friskenev. We will abide it in that form, for we do not think that in face of the fine which is of record and proveth *ut supra* [etc.]; but if you be of opinion *ut supra*, then we shall have plenty to say to you.

Toudeby. It would be a strange piece of common law that allowed a man to have fee simple and fee tail in one and the same tenement at one and the same time. For just as of course in a writ of mortdancetor I should be received to say that the ancestor of whose seisin etc. had naught but a fee tail etc., so in a writ of formedon the natural answer is to say that the ancestor of whose seisin etc. had a fee simple. Consequently, seeing that we tender a fine which proveth *ut supra*, we submit that you ought not to get to any averment contrary to the tenor of the fine.

Scrope. If our ancestor had taken a release from the donor should we not have had our recovery by the form?

Toudeby. I believe that you would not. In such circumstances he would have had a fee simple in respect of the collateral heirs and a fee tail in respect of the lineal heirs.

BEREFORD C.J. There is more in his pleading than mere wind.

Toudeby. If the claimant were of full age he would not have this averment against the tenor of the fine; and if the fine were acknowledged we would abide judgment, but he is within age and cannot make any acknowledgment.

¹ And avowment was consequently unnecessary.

Nota par
Berr.

Berr. Vn Iohan purehasa vn maner ey en Essex a luy et a les heirs de seon corps etc. puy^s prist A. a femme et voleit qe A. eust estat a sa vie en mesme les tenementz et porta bref de guarauntie de chartre vers seon feffour qe vint et coniseit les tenementz estre le dreit Iohan come ceux qe Iohan et A. auient de seon doun et ceux etc. a auer etc. a Iohan et A. et a les heirs Iohan Iohan devia seon heir ousta A. ele porta lassise et lassise feut agarde ¹qe dist etc. par quei feut agarde quele ne preit etc. et enquire² auoit ele fyn ³qe proua etc.

Et habuit diem in quindena sancti Hillarii⁴ etc.

II.⁵

Herle. La ou vous dites qe lestatut meyntent qe apres la mort etc. les tenements retournent ou descendent etc. ieo pose qe ieo entre apres la mort le tenant en la taille qe deuye saunz issue etc. le heir le donour porte son bref vers moi qest deynz age il ne serra pas resceu auant son age etc. Dautrepart lissue a la commune ley auant ces hures auoit poner vser le mortdaneestor la ou le pere murut seisi mes ore pus lestatut ly est done bref de forme de doun en leu de mortdaneestor ou le pere murust seisi mes ore mettons auant fyn qest de recorde qe testmoigne qil ne murust pas seisi de autel estat com vous demaundez iugement.

Scrop. La ou vous dites qe le heir le donour ne serra pas resceu duraunt son nouuage etc. ieo vous deny et la ou vous biez a targer le plee par la fyn tanqe a nostre age a ceo ne deuez estre resceu pur ceo qe ieo ne suy pas partie a la fyn ne rien ne eleyne par my la fyn par qei etc.

Toud. Ieo pose qe vous fuissez de pleyn age et ieo meyse auant la fyn com ieo face ore a prouer quel estat vostre pere auoit en les tenementz vous nauerez iames la forme en sa persone sy vous ne disclamez en cest accioun qe vous serreit acru etc. par cest fyn mes ore estes deynz age par qei la ley ne vous put chacer a desclamer en cest accioun etc. par qei si vous dedeysetz la fyn et troue fut par enqueste nostre dit vncore serreit vostre accioun reserue par la fyn ou par le seire facias et sy ensuerreit qe vne mesme accioun de vne

¹⁻³ et ceo la troue la femme ne prist rien par son bref et si. *M* and *X*.
²⁻⁴ Added from *M* and *X*. ⁵ Continuation of the text of *D* from the point marked ³ on p. 53 above, where it ceases to be collatable with *B*.

BEREFORD C.J. One John purchased a manor in Essex to himself and to the heirs of his body etc. Afterwards he took A. to wife, and he wished that A. should have a life estate in these same tenements, and he brought a writ of warranty of charter against his feoffor, who came and acknowledged the tenements to be the right of John as being those which John and A. had of his gift and those etc. to have etc. to John and A. and to the heirs of John. John died. His heir ejected A. She brought the assize and the assize was awarded and said etc. And it was therefore adjudged that A. should take naught by her writ; and yet she had a fine which witnessed etc.

And he had a day on the quindene of St. Hilary etc.

II.¹

Herle. Whereas you say that the statute provideth that after the death etc. the tenements are to return or descend etc., I put the case that I enter after the death of the tenant in the tail who dieth without issue etc. and that the heir of the donor, who is within age, bringeth his writ against me. He will not be received before his age etc. Again, formerly, by the common law, the issue might use the writ of mortdancestor when the father died seised, but now, since the statute, the writ of formedon is given to him instead of the mortdancestor in the case of the father dying seised. But here we proffer a fine which is of record witnessing that he did not die seised of such estate as you are claiming. Judgment.

Serape. Whereas you say that the heir of the donor will not be received during his nonage, I deny it; and whereas you want to delay the plea by virtue of the fine until our full age, I say that you ought not to be received to that, because I was not privy to the fine and claim naught by the fine. Wherefore etc.

Toudeby. I put the case that you were of full age and that I proffered the fine, as I proffer it now, to prove what estate your father had in the tenements, you would never maintain the form in his person unless you disclaimed any right of action you might have under this fine; but now you are within age, and the law, therefore, cannot force you to disclaim this right of action etc. Consequently, if you should deny the fine and if our allegations were found by the inquest to be true, a right of action would still be saved to you under the fine or by a writ of *scire facias*, and so it would follow that a single right of action in respect of a single tenement might be both extinguished

¹ Continuation of the version given p. 53 above, where it ceases to be by *D* from the point marked ² on collatable with the version given by *E*.

mesme tenement put estre estent et saue qest contre ley par qei etc. duraunt vostre nounage etc.

Berr. Ne vous souent il pas coment *Herle* dit en lassise de nouele disseisine de Masyngham mes qil se fit tittle et troue fuit qil ne fuit pas de tiel tittle seisi eynz par 'autre etc. vncore il recouera par assise.

Herel. Sire oyl ceo serreit par resoun de fraunctenement.

Scrop. Mon bref est done par resoun dune forme taille la quel nous sumes prest etc.

Malm. Al auerement ne deuetz estre resceu auaunt vostre age qe si vous fuissez de age et ieo meyse auaunt la fyn etc. il vous couendreit a ceo respoudre en avoiaunce la com a dire qe statut vous eyde mes ceo ne poez pur vostre nounage par qei etc.

Toud. ad idem. Ieo pose qe vostre pere moi vst feffe etc. vous ne serrez par cas resceu duraunt vostre nounage etc. si ieo meise auaunt le fet etc.

Scrop. Noun serray qe fyn ne autre chose put barrer.

Herle. Ieo pose qe apres la mort le pere le frere vst entre et aliene et oblige luy et ces heirs a la garauntie ieo croi qe vous serretz barre si vous fetez vostre purchase apres la mort le vncle.

Scrop. Ieo croi mesqe il pende vncore en iugement etc. nous ne sumes pas en le cas.

Herle. Vncore ne deit il estre resceu duraunt son nounage qe nous vous dioms qe auaunt ces hures vn fyn se leua entre [sic] deuaunt sire E. de Seygoue etc. de mesme le maner entre Roger de Walsam qil dit qil dona le maner a Iohan son pere issi qe Roger coniseit le maner etc. estre le droit Iohan com ceo qil auoit etc. et pur cel reconisaunce Iohan graunta et rendi a Roger a terme de sa vie apres soun descas qe le maner retourne a luy et a ces heirs et veiez cy la fyn qe testmoigne et vous heir a lun et a lautre issi qe si vous fuisset ore resceu il vous couensit garauntir mes ceo ne poiez pur vostre nounage par qei etc. Estre ceo nous auoms mys auaunt fyn qe tesmoigne de quel estat il murust seisi.

and saved, which would be contrary to law. Therefore etc. during your nonage etc.

BEREFORD C.J. Do you not remember how *Herle* said in *Masingham's* case of novel disseisin that though a claimant claimed by a certain title and it was found [by a jury of attain] that he was not seised by that title but by another etc., yet he recovered by assize¹?

Herle. Yes, sir, but that was because it was a freehold.

Scrope. My writ is given by reason of a limited form [of gift], which we are ready etc.

Malberthorpe. You ought not to be received to the averment before your age, for if you were of full age and I proffered the fine etc. you would have to answer in avoidance, as by saying that the statute helped you; but, by reason of your nonage, you cannot do that, and so etc.

Toudeby ad idem. I put the case that your father had enfeoffed me etc. If I proffer the deed etc., you will not be received during your nonage etc.

Scrope. ²I shall not be [barred], for neither fine nor aught else can bar me.³

Herle. I put the case that after the father's death the brother had entered and alienated and bound himself and his heirs to the warranty. I believe that you would be barred if you had acquired by purchase after the death of the uncle.

Scrope. I believe that that case is still awaiting judgment etc. We are not in the same circumstances.

Herle. For yet another reason he ought not to be received during his nonage, for we tell you that heretofore a fine of the same manor was levied before Sir E. of Seygove⁴ etc. between Roger of Walsham [and John of Walsham] which witnessed that Roger gave the manor to John, the plaintiff's father; wherefore Roger recognized the manor etc. to be the right of John as that which he had etc.; and in consideration of that recognition John granted and surrendered [it] to Roger for the term of his life; and after Roger's death it was to return to John and his heirs, and see here the fine which witnesseth this; and you are heir of both Roger and John, so that if you were now received you ought to warrant, but you cannot do that because of your nonage, and therefore etc. Further, we have proffered a fine in witness [of the nature] of the estate of which your father died seised.

¹ See p. 24 above.

^{2,3} The text is probably corrupt.

⁴ The text is corrupt. The fine was, in fact, levied before METINGHAM, C.J. See p. 71 below.

Scrop. La fyn suppose qil auoit doun prededent [*sic*] entre Roger et Iohan et ceo fust en forme taille et par cest chartre prest etc. qe ieo qil yaoit [*sic*] apres ceo qil dona les tenementz a Iohan nostre pere en fee taille qil vst graunte la reuersioun apres Iohan nostre pere par fyn qe la reuersion il reserua uers luy qant il fit le doun etc. cest fyn nesteynt pas la taille en la descende par qei cest fyn ne nous barre mye mesqe nous fuissoms de pleyn age iugement.

Malm. Vous nestes pas en cas de statut a voider la fyn pur ceo qe la fyn se leua pas par nul en la taille eynz se leua entre cesti Roger qe vous dites qe fut donour et vostre pere et vous heir a lun et a lautre iugement.

Westecote. Cest bref mest done par statut a demaunder les tenementz par resoun del doun etc. et noun pas pur ceo qe moun pere morust seisi de autel estate qe ieo demaunde qe tut vst moun pere aliene etc. vous ne targerez mye le plee tauntqe a moun age qe ceo ne serra pas resoun a dire qe moun pere morust seisi.

Berr. Vous nauez rien vncore dit pur qei il ad mestre datendre son age.

Toud. Veiez cy la fyn qest de recorde et iugement en ly memes et proue qe Iohan auoit fee simple et sil fuissent resceu alauerement ceo serreit auoider la fyn.

Scrop. La ou vous dites qe la fyn etc. qil auoit fee simple par taunt nous ne poez ouster etc. qe nostre bref ne dit pas qil auoit fee simple mes dit qe Roger dona en fee taille vous auetz dit en fee pure et rien ne mustrez qe ceo testmoigne forsqe la fyn qe suppose doun precedent et noun pas lequel fee simple ou fee taille. Dautrepart si tenementz seyent donez en fee taille le doneour pus relest et quitecleyme le heir en la taillo ne serra barre par le quitecleyme a demaunder par la forme.

Toud. Sil fuit daneroc la forme en demendre le fee par le quitecleyme Dautrepart si lissue portereit le mortdancestor ceo ne serreit pas respouns a dire qe son pere nauoit forsqe fee taille abatre le mortdancestor et issi recouerit fee simple par qei etc.

Stonore. Si nous vssoms fyn qe prouast la forme vous ne serretz pas resceu auoider la forme par cest fyn qest de pusnee date et ore mustre [*sic*] chartre qe testmoigne la estre [*sic*] et quel nous voloms

Scrope. The fine supposeth that there was a previous grant from Roger to John, and that it was tailed in form, and by this charter ready etc.;¹ and I submit that since John our father granted the tenements by this fine and reserved the reversion to himself after Roger granted the tenements to John in fee tail without reserving the reversion,² this fine doth not extinguish the tail in the descent, and therefore this fine would not bar us even though we were of full age judgment.

Malberthorpe. You do not fulfil the statutory conditions for the avoidance of the fine, for the fine was not levied by anyone in the tail, but was levied between this Roger, who, you say, was the donor, and your father; and you are heir of both the one and the other. Judgment.

Westcote. This writ to claim the tenements is given to me by statute because of the grant etc., and not because my father died seised of such an estate as I am claiming; for, though my father had alienated etc., you could not delay the plea until my age, for to say that my father died seised would be no reason therefor.

BRETFORD C.J. You have said naught yet to show why he ought to await his age.

Toudeby. See here the fine which is of record and judgment in itself, and proveth that John had fee simple; and if the plaintiff were to be received to the averment it would be in avoidance of the fine.

Scrope. Though you say that the fine etc. [witnesseth] that John had fee simple, you cannot, by that, oust us etc., for our writ doth not say that Roger had fee simple, but saith that he granted in fee tail. You have said [that he granted] in fee simple, but you show naught in proof thereof save the fine which supposeth a previous grant, and doth not specify whether it was fee simple or fee tail. Further, if tenements be granted in fee tail and the grantor afterwards release and quitclaim, the heir in the tail will not be barred by the quitclaim from claiming by the form.

Toudeby. [I agree] if he were to aver the form, changing the description of the fee in accordance with the quitclaim. Again, if the issue were to bring the mortdancestor, it would be no answer in abatement of the mortdancestor to say that his father had only a fee tail, and so he would recover a fee simple. Therefore etc.

Stonor. If we had a fine to prove the form you would not be received to avoid the form by this fine which is of a later date; but now we produce a charter, which we are ready to aver, which witnesseth the

¹⁻² The text is obviously corrupt, and the translation given above, is conjectural.

auerer qe doune auxi haut estat com fet la fyn et demaundoms iugement desicom la seisine fut liuere sur la forme de la chartre.

Toud. Non est simile qe la fyn put estre auere par recorde Dautrepart la fyn qe nous mettoms auaunt si fuit dage il couendreit garauntir et dire qe la chartre fut fet auaunt la fyn et ceo ne put il fere duraunt le [sic] son nounage.

Berr. Il yauoit vne dame qe porta vne assise de nouele disseisine et fut le cas tiel son baroun fuit enherite de certeynz tenementz par le doun vn Adam issi qil voleit fere estat a sa femme et il et sa femme porterent bref de garauntie de chartre vers Adam et vynt en court et conusit les tenementz com ceux qil auoient de son doun auer et tenir al baroun et a la femme et as heirs le baroun le baroun morust le heir entra la femme porta lassise et myt auaunt la fyn lautre myt auaunt chartre en proue del estat son pere qil auoit auaunt la fyn et ou estre ceo tendy dauerer qe pus la confeccioun de la chartre son pere vnqes se demyst et pria lassise quel assise counta loce la Wyte par quei fut agarde qele ne prist rien par son bref.

III.¹

Forma donacionis.

Nicholas de Walsham porta soun fourme de doun vers Alice qe fut la femme William de W. et demanda le Maner de W. qe vn Ion dona a William soun pere et a ly etc. et le quel apres la mort etc. a ly deit descendre par la fourme auant dit.

Cant. Deuant Sire Rauf de Hengham etc an etc. entre les auantditz Alice et William pleignantz et vn Nicholas chapeleyn deforcient se leua vne fyn del maner auantdit ou mesme cely Nicholas conisoit le maner contenu en le bref estre le dreyt William et Alice et ceo lour rendy a auer et tenir a terme de lour .ij. vies apres lour deces mesme cel maner remayndreit a mesme cesti Nicholas qe ore demande et vous dioms qe mesme cesti Nicholas est deynz age ou sil fut resceu si couendreit il trier cele fyn qe est en le dreyt a quei enfant deynz age ne put estre partie et demaundoms iugement si durant soun nounage a cesti bref deit estre resceu.

¹ Text of (III) from C.

form and granteth as high an estate as the fine doth ; and, seeing that seisin was delivered in accordance with the charter, we ask judgment.

Toudeby. They do not stand on the like ground, for the fine can be averred by record. Further, if the plaintiff were of full age he would have to warrant under the fine which we produce and say that the charter was made before the fine, but he cannot do that during his nonage.

BEREFORD C.J. There was a lady [of a manor] who brought an assize of novel disseisin ; and the circumstances were these. Her husband had an estate of inheritance by the grant of one Adam, and he wanted to grant an estate to his wife ; and he and his wife brought a writ of warranty of charter against Adam, who came into Court and acknowledged the tenements to be those which they had of his grant, to have and to hold to the husband and the wife and to the heirs of the husband. The husband died. The heir entered. The wife brought the assize and proffered the fine. The heir produced the charter in proof of the estate his father had before the fine ; and, further than this, offered to aver that his father had never demised after the making of the charter ; and [the lady] prayed the assize, which assize ¹was brought by Lucy the Wyte.² Wherefore it was adjudged that the wife should take naught by her writ.

III.

Formedon.

Nicholas of Walsham brought his writ of formedon against Alice that was wife of William of Walsham and claimed the manor of Walsham which one John granted to William, his father, and to him etc., the which ought to descend to him after the death etc. by the form aforesaid.

Cambridge. A fine was levied before Sir Ralph of Hengham etc. in the year etc. between the aforesaid Alice and William, complainants, and one Nicholas Chaplain, deforciant, in respect of the aforesaid manor, by which that Nicholas recognised the manor named in the writ to be the right of William and Alice, and surrendered it to them to have and to hold for the term of their two lives, and after their death that same manor was to remain to this same Nicholas who now claimeth ; and we tell you that this same Nicholas is within age. If he were now received, it would be necessary to try this fine, which is in the right, but no infant within age can be a party to try the right ; and we ask judgment whether he ought to be received to this writ during his nonage.

¹⁻² The text is not very clear, but the translation given above probably conveys the sense intended.

Scrop. Lestatut veot qe statim post mortem etc. le quel estatut nous doune ceste accioun par mye la taille la quele taille vous ne dedites par qei nous prioms qe la court la teigne agraunte.

Herle. Statut dit qe statim post mortem etc. ad eorum exitum etc. post eorum obitum remaneat vel ad donatorem vel ad eius heredes revertat donqe semble par mesme la resoun qe si le done deuye sanz isseu le donour ou soun heir auera recouerir deynz age quod falsum est.

Scrop. En le reuerti homme demande de la seisine soun auneestre cum de fee et de dreyt et en le descender par mye la taille la quele accioun est done par statut ou en le reuerti est done a la comune ley par qei nent semblable.

Malm. A la comune ley ou launcestre morust seisi en fee taille le heir auoit soun recouerir par mordancestor ou le descender est ore graunte par statut et de pus qe la fyn qest de record testmoigne qe William soun pere ne morust pas seisi issi qe de sa mort a la comune ley il ne purra mye vser le mordancestor par qei demaundoms iugement si a cel bref qe est en lu de mordancestor deuoms respoudre.

Scrop. Cesti bref est done par statut le quel doune cesti bref indifferement la ou lautre [*sic*] morust seisi ou nent seisi.

Malm. Sil fust de age il conustreit le fet et pus dirreit ascune chose par qei ceo ne ly deit greuer ou sil fut resceu ore il ne respoundra rens a la fyn pur ceo qe il ne la purroit trier.

Toud. Sil fust de age il ne serreit pas resceu tanqe il eust deselame en la reuersioun et deus qe la fyn ly suppose estre enherite de mesmes lez tenementz ou ley ne ly seofire mye auer deux acciouns. a vn tens en vn mesme tenement ou sil fut deyns age respoundu il ne purra my deselamer et issy encountre ley aureit il .ij. acciouns par qei il ly couent attendre soun age.

Herle ad idem. Sil fut respoundu et nous trauersames la fourme et lenquest passast encontre ly si auereit perdu accioun par mye la taille et vncore apres la deces Alice par la fyn ly serroit accioun sauue

Scrope. The statute¹ saith that immediately after the death etc., which statute giveth us this action on the tail, which tail you do not deny; and we, therefore, pray the Court to take it as granted.

Herle. The statute saith that immediately after the death etc. to their issue etc., and, after the death of these, [the land] is either to remain to the donor or is to revert to his heirs. [Your contention] seems to be that, similarly, if the donee die without issue the donor or his heir within age would have an action to recover; but this is not so.

Scrope. In the reverter the claimant claimeth of the seisin of his ancestor as of fee and right, and in the descender by the tail, this action being given by statute, while the action in the reverter is given by the common law; and so they are not analogous.

Malberthorpe. By the common law, where the ancestor died seised in fee tail, the heir hath his recovery by a writ of mortdancestor, but the writ in the descender is now provided by the statute; and since the fine, which is of record, witnesseth that William, the plaintiff's father, did not die seised, the plaintiff could not, upon his father's death, use the writ of mortdancestor under the common law. Wherefore we ask judgment whether we ought to answer this writ which is provided in place of a mortdancestor.

Scrope. This writ is given by statute, and the statute giveth it indifferently both in the case where the ancestor died seised and where he did not die seised.

Malberthorpe. If the plaintiff were of full age he could admit the deed and then say something to show why it ought not to prejudice him; but if he were to be received now he could say naught in respect of the fine, for he can be no party to trying it.

Toudeby. Even if he were of full age he would not be received before he had disclaimed in the reversion; and since the fine supposeth him to have an estate of inheritance in these same tenements and since the law will not permit him to have two rights of action in respect of the same tenement at the same time, if he were now to be answered when, by reason of his being within age, he cannot disclaim, he would consequently have two rights of action; and therefore he ought to wait till his full age.

Herle ad idem. If he were to be answered and we traversed the form and the inquest passed against him, he would thereby lose his action in virtue of the tail; and yet by the fine a right of action would be reserved to him upon Alice's death, and so the Court, while extin-

¹ Statute of Westminster II. cap. i.

et issi la court ly estayndreit vne accioun et durreit vne autre qe serreit inconuenient.

Berr. En vne assise de nouele disseisine vn homme clama fraunc tenement par vn title et perdi et porta latteynte et recouery fraunc tenement par autre title auxi de ceste parte nest pas inconuenient qe homme de vn tens prendra rens par sa accioun ou en autre tens il purra recouerer mesmes les tenementz par autre accioun.

West. Il bient ceste parole alayer par .ij. resouns vn par le noun age vne autre par la fyn par noun age ne mye pur ceo qe lestatut nous donne accioun meyntenaunt apres la mort le tenaunt par la taille ou si nostre accioun fut delaye tanqe a vostre age estatut seruereit de nent par la fyn ne mye pur ceo qe lestatut dit et si fynis super his tenementis leuetur etc. dount a la fyn qe nule est ne respoundra iammes etc. et per consequens mesme la fyn ne deit nostre accioun targer.

A vn autre iour fut agarde qil respondissent outre et disoient qe entre vn Roger qil supposent qe dona en la tailla [*sic*] a Ion pere mesme cesti Nicholas qe ore demande se leua vne fyn lan .xxxj. deuant sire Ion de Metigham etc. ou mesme cesti Roger conissoit lez tenementz contenuz en le bref estre le dreyt Ion com ceo qil auoit de soun doune et pur cele reconnaissance mesme cesti Ion graunta et rendy mesmes les tenementz a Roger et a Isabel a tenyr a terme de lour deux vies et qe apres lour deces lez tenementz retournereient alauandit Ion et issy la ou vous affermez fee taille en nostre persone la testmoigne la fyn qe fee pure ou si vous fussez reseu vous destryerez la fyn a qei vous ne poez estre partie durant vostre noun age dount nous demaundons iugement si vous de tel age deuez estre reseu.

Scrop. La fyn qe vous mettez auant suppose qe durant¹ la fyn Roger dona de quel doune nous pernoms accioun le quel doune nous volons auer en fee taille et demaundons iugement si par nule fyne puy cel doune entre mesmes lez persones leue pusse nostre accioun targer ou nous de nostre accioun barrer. Et de autre parte tut conissoit Roger lez tenementz etc. estre le dreyt Ion etc. et issy par conissance esteynast le dreyt de la reuersion en sa persone et le affermast en la

¹ Seemingly a slip for *deuant*.

guishing one right of action, would give him another, which would be incongruous.

BEREFORD C.J. In an assize of novel disseisin a man claimed a freehold by a certain title and lost his case, and brought an attaind and recovered his freehold by another title. So there is naught incongruous if in the present circumstances a man should at one time take naught by his action and at another time recover the same tenements by another action.

Westcote. He is seeking to defeat this action on two grounds: first by reason of the plaintiff's nonage, and then by reason of the fine. He cannot do it by reason of the plaintiff's nonage, because the statute giveth us an action immediately upon the death of the tenant by the tail, and if our action were to be delayed until your full age the statute would be useless. Neither can he do it by the fine, for the statute saith that if a fine be levied in respect of tenements of this kind etc., no answer need ever be put in against the fine which is of none effect etc.; and, therefore, this same fine ought not to delay our action.

On a later day it was ruled that the defendant should answer over; and he¹ said that a fine was levied in the thirty-first year [of Edward I.] before Sir John of Mettingham etc. between one Roger, who, the plaintiff saith, made the grant in the tail, and John, father of this same Nicholas [the plaintiff], by which that Roger acknowledged the tenements laid in the writ to be the right of John, as having them by his, Roger's, grant; and in consideration of that acknowledgment that same John granted and surrendered the same tenements to Roger and to Isabel to hold for the term of their twolives, and after their death the tenements were to return to the aforesaid John; and so, while you say that we have a fee tail in our person, the fine witnesseth that we have a fee simple. If, then, you were to be received, you would have to try the fine, but you cannot be a party to doing that while you are within age. We ask judgment, therefore, whether you ought to be received while you are so within age.

Scrope. The fine which you tender supposeth that before² the fine Roger had made a grant, and it is upon that [previous] grant we base our action, and we are ready to aver that that grant was of a fee tail; and we ask judgment whether you can delay our action or bar us from our action by any fine levied between the same parties after that grant. And, further, even though Roger acknowledged the tenements etc. to be the right of John etc., and, consequently, did by that acknowledgment extinguish in himself the right in the reversion, declaring it to be in the person of John, yet it doth not follow from

¹ sc. her counsel.

² See the text and footnote.

persone Ion par tant nensute il pas qe le dreyt taille qe passa par mye le primer doune fut restreint en la persone Ion.

Toud. Nous ne pledoms mye a restreyndre la taille mes a prouer qe durant vostre nounage ne deuez estre resceu pur ceo qe vous ne poez la fyn trier entre vos auncestres.

Scrop. Pledez oue nous et quant vous vendrez au point qe nous ne poms trier etc. pernez donqe votre auantage etc.

Stan. La ou vous ditez qe Roger dona en fee taille il dona en fee pure.

Scrop. En fee taille prest etc.

Herle. A lauerement ne deuez auenir encountre la fyn qe testmoigne le doune en fee pure qe est de recorde.

Scrop. Ceste fyn se leua sur vne garauntie de chartre issy suppose cele fyn vn doune precedent de quel doune nous pernomms nostre accioun en la taille et la quele taille nous voloms auerer et la quele auerement il refusent iugement et mist auant chartre.

Toud. La fyn veot qe Roger conut le maner estre le dreyt Ion com ceo qe il auoit etc. et en taunt suppose la fyn le doune estre de fee pure par qci de auerer le reuers de la fyn ne deit il auenir.

Scrop. Si Roger eust relese a Ion apres la taille fet cele reles ne eust pas restreint la taille en la persone Ion nent plus de ceste parte.

Et sic pendet.

IV.¹

Forma Donacionis.

Nicholas fitz Nicholas de Walsham porta bref de forme de doun en le discender vers Margerie de Walsham et dist qe les tenementz furent donez a Nicholas son pere et a les heirs de son corps etc. et les queux apres la mort Nicholas a luy deyuent descendre par la forme.

Herle. Altrefoitz deuaunt sire Rauf de Hingham et cez cum-paignons certeyn an etc. se leua vne fin entro Nicholas le Chapleyn et Nicholas pere lenfant et mesme ceste Margerie ou Nicholas conust etc. estre le dreyt Nicholas le Chapleyn etc. pur quel reconissaunce Nicholas rendi mesmes les tenementz a Nicholas et a Margerie a terme de lur deus vies et apres lur discesse qe les tenementz remeyndrent

¹ Text of (IV) from E.

all that that the tailed right which passed by the first grant was of none effect in the person of John.

Toudeby. We are not pleading in extinguishment of the tail but to show that you ought not to be received during your nonage because you cannot try the fine which was made between your ancestors.

Scrope. Plead with us, and when you come to arguing the point whether we can try etc. make the most of it you can etc.

Stonor. Whereas you say that Roger granted in fee tail, [we say that] he granted in fee simple.

Scrope. In fee tail, ready etc.

Herle. You ought not to get to that averment against the fine which witnesseth that the grant was of a fee simple and which is of record.

Scrope. This fine was levied under a writ of warranty of charter, and consequently this fine doth suppose a grant precedent, and it is from that grant in tail that we take our right of action; and we are ready to aver that grant in tail, and they refuse that averment. Judgment—and he tendered the charter.

Toudeby. The fine saith that Roger acknowledged the manor to be the right of John as that which he had etc., and thereby the fine doth suppose the grant to be of a fee simple. Consequently he ought not to get to an averment of the opposite of the fine.

Scrope. If Roger had released to John after the grant in tail, that release would not have extinguished the tail in John's person; no more here.

And so the matter hangeth.

IV.

Formedon.

Nicholas, son of Nicholas of Walsham, brought a writ of formedon in the descender against Margery of Walsham, and said that the tenements were granted to Nicholas, his father, and to the heirs of his body etc.; which tenements ought, after the death of his father, to descend to him by the form.

Herle. At other time before Sir Ralph of Hengham and his companions in a certain year etc. a fine was levied between Nicholas the Chaplain and Nicholas, the father of the infant [plaintiff], and this same Margery whereby Nicholas acknowledged etc. to be the right of Nicholas the Chaplain etc. in consideration of which acknowledgment Nicholas surrendered these same tenements to Nicholas and to Margery for the term of their two lives, and after their death the tenements were to

a cesti enfaunt etc. et depus qe la fin qest de recorde tesmoigne qe le pere lenfaunt morust pas seisi com de fee en quel cas cesti bref si est le bref de dreyt pur le issue en la discendre et il deynz age iugement si duraunt son nounage etc.

Scrop. Statut veot qe statim post mortem huiusmodi viri et mulieris etc. ore cele parole ne poet estre meyntenu si la femme re-teigne en ceo cas iugement si etc. Item statut veot qe si fin sur cele manere de tenement seit leue qe la fin seit nule par qey etc.

Toud. Nous dioms qe nous tenoms ceux tenemenz par forme de la fin qest de recorde et la reuercioun a vous et ne clamons rien a vostre desheritaunce et pur ceo desclamez en la reuercion ou conisetz.

Herle. Nous vous dioms qe lan .xxj. deuaunt sire Iohan de Metingham etc. se leua vne fin entre Robert de Walsham et Nicholas son fuitz pere mesme celuy qe ore porte etc. ou Robert conust etc. estre le dreit Nicholas come ceux qil auoit de son doun pur quel reconnaissance Nicholas graunta a Robert mesmes les tenementz a terme de sa vie et apres son decesse qe les tenemenz retournerent a Nicholas et a cez heirs et desicom nous mettoms anaunt cez fez qe sount de recorde et qe tesmoignent qe vostre auncestre auoit fee simple et la resoun par quele vous demandez si est par vne taile qe serreit en anentissement de les fins a qey il ne poet estre partie deynz age par qey nous nentendoms pas qe la court nous voile mettre a respoudre a ceo bref encountre la fin duraunt son nounage.

Scrop. Cest al accioun voletz ceo pur respouns.

Herle. Robert ne dona mye en fee taile prest etc.

Scrop. Prest dauerer qe si et mustra anaunt la chartre par qey etc.

Herle. Al auerement ne denetz auenir depus qe nous mustroms fin par la quele vostre auncestre resceust ceux tenemenz en fee simple iugement si al auerement del pais qe serreit encountre de la fin vous deuetz auenir.

Scrop. Il nous voelent barrer par vne fin qe se leua sur bref de garrantie de chartre la quele fin suppose vn doun de nostre auncestre de qy nous pernoms nostre titil par la forme en supposauit qil fu seisi anaunt la fin et nous voloms auerer qe en fee taile prest etc. et demaundoms iugement.

remain to this infant etc., and since the fine, which is of record, witnesseth that the father of the infant did not die seised as of fee, judgment whether during his nonage etc., as in those circumstances this writ is the writ of right for the issue in the descent, and he is within age.

Scrope. The statute provideth that immediately after the death of a husband and wife in these circumstances etc. Now these words cannot be fulfilled if the wife retain in these circumstances. Judgment whether etc. Again, the statute saith that if a fine be levied of a tenement of that kind the fine is to be void ; wherefore etc.

Toudeby. We say that we hold these tenements by the form of the fine, which is of record, and the reversion is to you, and we claim naught to your disinheritance ; and therefore either disclaim in the reversion or admit [the fine].

Herle. We tell you that in the twenty-first year [of the reign of King Edward, father of the lord King that now is] before Sir John of Metingham etc. a fine was levied between Robert of Walsham and Nicholas his son, father of this same [Nicholas] who now bringeth etc., whereby Robert acknowledged etc. to be the right of Nicholas as those which he had by his grant, in consideration of which acknowledgment Nicholas granted to Robert those same tenements for the term of his life, and after his death the tenements were to return to Nicholas and to his heirs ; and since we produce these deeds, which are of record and witness that your ancestor had a fee simple, and since the ground on which you are claiming is a tail which would be in defeasance of the fines, to which the plaintiff cannot be party while he is within age, we do not, consequently, think that the Court will wish to make us answer this writ, against the tenor of the fine, during the plaintiff's nonage.

Scrope. You are pleading to the action. Do you mean this for your answer ?

Herle. Robert did not grant in fee tail ; ready etc.

Scrope. Ready to aver that he did—and he proffered the charter—wherefore etc.

Herle. You ought not to get to the averment since we produce a fine by which your ancestor took these tenements in fee simple. Judgment whether you ought to get to an averment of the country which would be contrary to the fine.

Scrope. They want to bar us by a fine which was levied under a writ of warranty of charter, which fine supposeth a grant by our ancestor from whom we take our title by the form [of the grant], supposing that he was seised [of a fee simple] before the fine, and we will aver that in fee tail, ready etc. ;| and we ask judgment.

Toud. Et nous iugement depus qe la fin tesmoigne qe le pere lenfaunt auoit fee simple si vous al auerement deynz age qe serreit en anentisment de la fin deuetz auenir.

Scrop. La fin ne proue pas qil auoit fee simple mes qil auoit les tenemenz de son doun auant quel doun la fin suppose qil fu seisi et nous voloms auerer qen forme taile iugement.

Toud. Si le donour out relese etc. al done le issue recouereit par le mortdaunceestre.

Scrop. Mes sil vst aliene vssetz vous barre le issue de son bref de forme de doun.

Berr. Le donour serra oste de la reuercioun mes par taunt ne ostrez vous pas le issue qil ne vsera bien le forme de doun.

Cauntbr. Statut voet qe si celuy a qy le doun etc. out aliene le issue apres sa mort eit son recouerer etc. mes ore la fin etc. nule rien ne destret al heir qe nous affermons le dreit en sa persone et rien ne pledoms a sa desheritaunce dunk semble il qe par lestatut ne se poet il pas eyder en ceo cas etc.

V.¹

Fourme de doune.

Nichol le fiz Iohan de Walsam porta son bref de fourme de doune uers Alice qe fut la femme Iohan de Walsam et demaunda le maner de Walsam forspris vj. acres de terre en meym le maner et dit qe vn Roger de Walsam fut seisi du maner forspris la forsprie et dona le maner a Iohan de Walsam et a les heyres de Ion cors issaunz par quel doun Iohan fut seisi etc. sulom la fourme auantdit et lequel apres la mort Iohan a Nichol fiz et heyr meyme cely Iohan descendre deit par la fourme etc.

Caunt. defendy et dit qe lan du regne le roy qe mort est primer sei leua vne fine enter Iohan et Alice de vne part pleignauz et Nichol le chaplayn de autre part deforeant de meyme le maner forspris etc. ou Iohan et Alice conusait les tenementz en bref contenuz estre le dreyt Nichol com ceux qe il auoit de son doun pur quel reconusance Nichol regraunta les tenementz a Iohan et Alice a tutez lur vies et apres lur

¹ Text of (V) from H.

Toudeby. And we [ask] judgment whether, since the fine witnesseth that the infant's father had a fee simple, you ought to get to the averment, which would go to the defeasance of the fine, during the plaintiff's nonage.

Scrope. The fine doth not prove that [Robert the father] had a fee simple, but that [Nicholas the son] took the tenements by his grant, before which grant the fine supposeth that he was in seisin : and we will aver that in a tailed form [etc.]. Judgment.

Toudeby. If the donor had released etc. to the donee, the issue could recover by the mortdancestor.

Scrope. But if he had alienated, could you bar the issue from his writ of formedon ?

BEREFORD C.J. The donor would be ousted from the reversion, but you could not for such reason bar the issue from his clear right to use the writ of formedon.

Cambridge. The statute provideth that if he to whom the gift etc. have alienated, the issue shall have his recovery etc. after [the alienor's] death ; but here the fine etc. taketh naught from the heir, in whose person we affirm the right to be ; and we are pleading naught that goeth to his disinheritance. It seemeth, then, that in these circumstances he can get no aid from the statute etc.

V.

Formedon.

Nicholas, the son of John of Walsham, brought his writ of formedon against Alice that was wife of John of Walsham and claimed the manor of Walsham saving six acres of land within the same manor ; and he said that one Roger of Walsham was seised of the manor saving so much as is excepted and granted the manor to John of Walsham and to the heirs of the body of John issuing ; by which grant John was seised etc. according to the form aforesaid, and the said manor ought by the form etc. to descend to Nicholas, son and heir of that same John, after the death of John.

Cambridge defended and said that in the [twenty-]first year of the reign of the King that is dead a fine was levied between John and Alice of the one part, complainants, and Nicholas the Chaplain of the other part, deforcient, in respect of the same manor saving etc. by which John and Alice acknowledged the tenements named in the writ to be the right of Nicholas as those which he had by their grant ; and in consideration of that acknowledgment Nicholas regranted the tenements to John and Alice for the whole of their lives, and after their

deces qe les tenementz remayngnent a Nichol fiz meyme cely Iohan qe ore demaunde et demaundoms iugement del hure qe son recouerer est taylle en la fine qe est de recorde qe tesmoigne qe il nauoit mie estate forsqe de fraunktenement et nient de fee si par ceo bref accioun poet auer tanke son tens vigne qe est compris deynz la fine.

Scrop. Nous uoloms auerer nostre fourme.

Caunt. Vous auez entendu coment nous auoms mis anaunt fine qe tesmoigne qe le pier nauoit altre estate qe de fraunktenement et si il fut ore respondu si enenteroit il nostre fine durant son noun age iugement.

Scrop. Statut nous aide qar il dit quod statim post mortem dount ne couient il plus qe auerer la fourme et auxint si fine des ceux tenementz sait leue seit nule etc.

Toudeby. Si il fut ore respondu a ceste fourme et iugement sei fit ccontre luy nunkor quant tens auendroit luy durroit [*sic*]¹ reconerer et si aueroit accioun sur accioun qar il ne poet desclamer qar nous luy deuoms recouerer par fine qe est de recorde.

Scrop iustice. Il dit qe il voet auerer la fourme et la ou la fourme poet estre auere si le pier obliga luy et ses heyres a la garauntie quidez vous qe ceo ly barrerait.

Toudeby. Ieo cray qe oyl.

Herel. Si tenementz sount donez en fee taylle et cely a qy le doun sei fete seit disseisi par vn estrange et le frer le disseisi face vne chartre al tenaunt et oblige luy et ses heyres a la garauntie le fiz le disseise apres la mort le pier et le vikel nauera iames recouerer.

Scrop. Ceo peut vncor set estre ceo il ne mettunt riens ccontre nous mes ceste fine la ou nous uoloms auerer la taylle coment qe la fine sei leua et la fine entre autres persones qe ne firunt le doun par la fourme par qay si ceste fine out este leue entre meymes les persones la court ne out mie en si graunt euidence de nostre dreyt et mes qe si fut del hure qe nous voloms auerer la fourme la fine qe sei leue en desheritaunce le heyr en la taylle en ccontre la fourme seit nule.

Malb. Quant vous seriez de age dunkes plederez vous en nent-issaunt la fine et qe ele est nule issint veirz [*sic*] est qe la fine sei leua

¹ The text here as elsewhere is corrupt.

death the tenements were to remain to Nicholas, son of that same John, who now claimeth; and since his recovery is of an estate tail according to the fine, which is of record and witnesseth that he hath no estate save a freehold and not a fee simple, as is set out in the fine, we ask judgment whether he can have any right of action by this writ until he be of full age.

Scrope. We are ready to aver our form.

Cambridge. You have heard how we have tendered a fine which witnesseth that his father had no other estate than a freehold, and if he were to be answered now during his nonage our fine would be defeated. Judgment.

Scrope. The statute is in our favour, for it saith 'immediately after the death.' We need, then, only aver the form; and, further, if any fine of these tenements were levied it is void etc.

Toudeby. If he were to have answer now to this writ of formedon and judgment were given against him, yet, when he attained his age, he would have an action to recover, and so would have plea upon plea, for he cannot [now] disclaim, and we ought to recover against him by the fine which is of record.¹

SCROPE J. The plaintiff saith that he is ready to aver the form, and do you think that where the form can be averred, the fact that the father bound himself and his heirs to the warranty can bar him from that?

Toudeby. I believe that it will.

Herle. If tenements be granted in fee tail and he to whom the grant is made be disseised by a stranger, and the brother of him that is disseised make a charter to the tenant and bind himself and his heirs to the warranty, the son of him that was disseised will never be able to recover after the death of his father and his uncle.

Scrope. That may be; but, again, they tender naught against us save this fine, while we are ready to aver the tail. Though the fine were levied it was levied between persons other than those who were parties to the grant by the form. If, therefore, this fine had been levied between the same persons, the Court would not have had as clear evidence of our right [as it has now], and even though it had been, yet, since we are ready to aver the form, the fine that was levied against the form in disinheritation of the heir in the tail is void.

Malberthorpe. When you are of age you can then plead in avoidance of the fine and that it is of none effect after this fashion, that it is true that the fine was levied, but it ought not to prejudice you, for

¹ The text here and elsewhere is obviously corrupt and the translation is necessarily conjectural to some extent.

mes il ne moy deit greuer kar etc. et deselor le cas mes nient duraunt vostre nounage.

Caunt. Veez cy vne fine qe sei leua entre Iohan defendaunt et Roger et Alice sa femme pleygnauntz cest a sauer qe roger graunta les tenementz estre le dreyt Iohan com ceo qe il ad de son doune pur quele reconisaunce Iohan graunta et rendit meymes les tenementz a roger et Alice a tut lur vies et apres lur deces qe les tenementz luy reuertissent et ¹demaundoms iugement² del lure qe Iohan auoit estate de fee simple com la fine suppose et puyz sei demist et reprist estate a terme de vie et de la vie sa feme com celui qe fut seisi de fee simple et qe poer en auoit et taylla vne remayndre a cely Nichole qy porte le bref issi qe les fines deforce a queux il ly couient par les resonnes auaunt ditz respounder si auauntage par la fourme voyle enprendre iugement si duraunt son noun age deiue estre respondu.

Scrop. Coment qe roger reconoisait a Iohan dreyt simple et la forme fut deuaunt tayle a qay vous ne responez nient iugement de luy com de noun defendu.

Berr. Respondez a la fourme.

Malb. Roger dona en fee simple.

Scrop. En fee taylle prest auerer.

Malb. A cest auerement ne auendrez point qar veez cy fine a qay vostre auneestre fut partie qe tesmoygne fee simple iugement si al auerement coudre tesmoygnaunce de la fine deuez attayndre.

Scrop. Vous auez entendu coment ils vnt mis auaunt ceste fine qe sei leua sur garauntie de chartre et qe tesmoygne qe roger conoisa les tenementz estre le dreyt Iohan com ceux qe il auoit de son doun ore tesmoygne la fine qe il auoit done deuaunt et qe il fut doun quel doun nous voloms auerer fut en fee taylle sulom la tenure de ceste chartre demaundoms iugement si de le auerement nous deiuent barrer.

Malb. Si cest auerement fut ore rescu ceo serroit auentier la fine qe serroit duresee.

Migg. Nanil il ne serroit mie duresee qar coment qe la fine sei leua le doun sei fit deuaunt et le statut voet qe le tenaunt tyegne sulom la uolunte du donur par la fourme du doun nient cant regarde a fine qe sei leue apres en biauuz de desheritaunce le heyr.

Malb. Le cas ou statut voidie fine leue sur la tayle si est soulement

^{1,2} These words are superfluous here, as they are practically repeated in the *iugement* a few lines below.

etc. and then state your case ; but you cannot do that during your nonage.

Cambridge. See here a fine which was levied between John, defendant, and Roger and Alice, his wife, complainants, to the effect that Roger acknowledged the tenements to be the right of John as those which he had by his, Roger's, grant. And in consideration of this acknowledgment John granted and surrendered the same tenements to Roger and Alice for the term of their whole lives, and after their death the tenements were to revert to him ; and, since John had an estate of fee simple according to the fine, which he then demised and then retook an estate, subject to the life-term of Roger and his wife, as one who had the fee simple and power of disposition, and he tailed a remainder to this Nicholas that bringeth the assize, so that the fines are valid, and Nicholas ought, for the reasons aforesaid, to make answer to them if he want to advantage himself by the form ; [but he cannot be a party to try the fines while he is under age, and so we ask] judgment whether he ought to be answered during his nonage.

Scrope. Though Roger acknowledged that John had a fee simple, yet the earlier form was in the tail, and to that you make no answer. Judgment of him as putting in no defence.

BEREFORD C.J. Answer as to the form.

Malberthorpe. Roger granted in fee simple.

Scrope. Ready to aver that he granted in fee tail.

Malberthorpe. You will not get to that averment, for see here a fine to which your ancestor was party that witnesseth a fee simple. Judgment whether you ought to get to the averment against the witness of the fine.

Scrope. You have heard how they have put forward this fine which was levied under a writ of warranty of charter and which witnesseth that Roger acknowledged the tenements to be the right of John as those which he had by Roger's grant ; now the fine showeth that Roger had made a previous grant, and we are ready to aver that that grant was of a fee tail, in accordance with the tenor of this charter. We ask judgment whether they ought to bar us from this averment.

Malberthorpe. To receive this averment now would be tantamount to annulling the fine, which would be a hardship for us.

Miggeley. No, there would be no hardship, for though a fine was levied, yet the grant was made before [the fine], and the statute saith that the tenant is to hold according to the intention of the grantor by the form of the grant, and that no regard is to be paid to any fine subsequently levied to the disinheritation of the heir.

Malberthorpe. The only case where the statute maketh a fine on

ou ele sei leue sur alienacioun en quel cas nous ne sumes nient et de puyz qe commune ley luy soefre et statut ne luy ogite point iugement si countre la fine qe tesmoygne fee simple en la persone Iohan quele fine nest mie uoidable par la resone auaunt dit si le auerement deue atteyndre.

Scrop. La fine en tiel cas ne luy donn fee simple plus auaunt qe relees si ele fut conu mes relees ne esteyndroit mie la fourme.

Toudeby. Le relees frait fee simple issi qe le heyr userait son mort-dancestor si il voile.

Scrop. Mes poet il alier.

Caunt. Il ad fee simple ceo ne poez dedire qar cely en qy la reuersion est barre et quant qe en ly demort passe en la persone le tenaunt dunk couent il qe ceo sait en la persone le tenaunt com fee pure ou il serra nient.

Berr. Ieo ose dire qe le donour et les heyres sont barrez par mie le relees.

Stonor. Ieo ne tienk cele fine de graynour ualue ou la chartre du donn par la tayle est precedent et seit troue qe il i out este vne fine precedent qe out tesmoygne la tayle et par quay ele out este tayle mes si fine eut este precedent la secunde fine out este de nule value etc. ergo ne en ceo cas.

Frisqu. Vous ne prouez mie par cest resoun si vous eusez fine qe tesmoygnat la tayle si aueriez vous chose de recorde countre chose de recorde et cely qy serrait de grayndre ualue destruerat cele qe serroit de mayndre value mes ore le auerement qe vous tendez est a esteyndre la force et [sic] la fine qe est de recorde et qe est solempne par quay demaundons iugement.

Scrop. Et nous demaundons iugement del hure qe vostre fine tesmoygne vn donn precedent et il ni ad mie translacion de possession com de fee simple et auons tendu de auerer qe le donn qe la fine tesmoygne fut sulom la fourme quel auerement vous refusez par quay nous prioms recorde des iustices.

Malb. Et nous iugement del hure qe la fine tesmoygne fee simple si countre la tesmoygnance de la fine denez lauerement tendre.

Berr. Ieo vie ou vn assise de nouele disseisine fut porte en ceste manere vn homme purchaea certeyn tenementz pur luy et ses heyres de vn autre ou le feffur vint en court et vne fine sei leua sur la garauntie

the tail void is when the fine is levied upon alienation, and we are not in that case; and, since the common law permitteth and the statute doth not forbid it, [we ask] judgment whether they ought to get to the averment against [the tenor of] the fine which witnesseth a fee simple in the person of John, a fine which, for the reason stated, is not voidable.

Scrope. The fine, in these circumstances, would not give him a fee simple any sooner than a release, if it were acknowledged, would do; but a release would not extinguish the form.

Toudeby. The release would make a fee simple, so that the heir could use his writ of mortdancestor if he wanted.

Scrope. But could he alienate?

Cambridge. He hath a fee simple. You cannot deny that, for he in whom the reversion was is barred, and whatever [estate] still remained in him passeth into the person of the tenant. It must, then, be in the person of the tenant as fee simple, or it will be naught.

BEREFORD C.J. I will take it upon me to say that the grantor and his heirs are barred by the release.

Stonor. I do not think that this fine is of much value since the charter of the grant in tail is precedent to it and it is found that there was a precedent fine which witnesseth the tail and by which the grant was tailed. But where there is a precedent fine a second fine hath no force etc., and therefore not in the present circumstances.

Friskency. You prove naught at all by this argument. If you had a fine which witnessed the tail you would have a matter of record to set against a matter of record, and that which had the greater authority would override that which had less authority; but the averment which you are now offering goeth to extinguish the effect of the fine, which is of record and made in solemn form; and therefore we ask judgment.

Scrope. And we ask judgment since your fine witnesseth that there was a precedent grant, and there hath been no variation in the nature of the possession, as of a fee simple, and we have offered to aver that the grant which the fine witnesseth was in accordance with the form, which averment you refuse; and therefore we pray the record of the Justices.

Malberthorpe. And we ask judgment whether you ought to offer the averment against the tenor of the fine, for the fine witnesseth a fee simple.

BEREFORD C.J. I have seen an assize of novel disseisin brought in the following circumstances. A man purchased of another certain tenements to himself and his heirs. The feoffor came into Court

de chartre et conoisait les tenementz contenuz en bref estre le dreyt Iohan com ceux qe I. et Alice sa feme auoient de son doun a tenir a .I. et .A. et a les heyres .I. des chefs seynurages de fee etc. apres le deces le baron la feme se mist en les tenementz et sei tynt einz vint le fiz et luy oghta ele dit qe ele fut seisi et disseisi le fiz dit qe il ne disseisi point ele mist auant la fine la assise passa troue fut tut issi qe le doun sei fit a luy et ses heyres et puy uolait il qe sa feme auoit estate a terme de vie et sur la garauntie de chartre leua la fine la quele fine tesmoigna doun precedent qe fut pur le hoime et ses heyres sanz ioindre la feme la feme prist riens par son bref par sire Rauf de Heyngham.

Herel. Vous auez entendu coment la fine coment qe ele tesmoigne doun et conoist le tenement estre le dreyt qe est suppose par mie la fine dreyt simple issi qe par mie cest conoissance du dreyt dreyt simple luy demoert par force de cest conoissance quel chose ne poet estre defet durant son nouuage.

Scrop. Et nous iugement dil hure qe nous ne pledoms mie a nostre fine nen auoms mester mes tendoms de auer la fourme quel auerement vous refusez demaundoms iugement et prioms seisin etc.

Frisk. Si Nicholas demaunda ceux tenementz par vn bref de Ael et contast de la seisine Roger et la fyne fut mis encountre ly la fyne ly barrait si senble il qe en le cas ou nous sumes pur ceo qe par la fyne plus tarde leue entre le donour et le tenaunt estraunge le donur de la reuersion mes qe cez tenementz eussaint este donez par la forme qar lestraunger de reuersion afferme fee simple issi qe son issue poet recouerer par le mortdancestor ou bref de dreyt dunk mes qil out diuers recouerers ceo suppose a vn effecte mes en lun recouerer la fyne ly serra barre auxi en lautre.

Scrop. Seyoms a vn qe les tenementz furent donez par la taylle.

Berr. Mes qe tiel estate ly cresce com de fee simple apres ceo qe le donnur sei ad estraunge de reuersion et il aliene lestate son issue ne condicion ne serra mie de tant enpire qil nauera son recouerer par la voy qil quidera plus certeyn qar par le primer doun estat luy crut si bien com al pier qe purchaca quel estat ne poet estre defet par

and a fine was levied under a writ of warranty of charter, and he acknowledged the tenements named in the writ to be the right of John as those which John and Alice his wife had of his grant, to hold to John and Alice and to the heirs of John of the chief lords of the fee etc. After the death of her husband the wife entered upon the tenements and maintained possession until the son came and ejected her. She said that she was seised and disseised. The son said that he had not disseised her. She tendered the fine. The assize passed and it was found that the grant was made to John and his heirs, and John afterwards desired that his wife should have an estate for the term of her life, but the fine which was levied under the writ of warranty of charter showed that there had been a grant precedent to the husband and his heirs without mentioning the wife, and the wife took naught by her writ by the ruling of Sir Ralph of Hengham.

Herle. You have heard how the fine witnesseth a grant, and [Roger] recognized the tenement to be the right [of John], and that right is supposed by the fine to be a right in a fee simple, so that by virtue of this recognition of right a fee simple reposed in him by virtue of this recognition, which cannot be annulled during his nonage.

Scrope. And we ask judgment, since we are not pleading to your fine, nor have we any need to plead to it, but we offer to aver the form, and you refuse that averment. We ask judgment and pray seisin etc.

Friskency. If Nicholas were claiming these tenements by a writ of ael and counted of the seisin of Roger, and the fine were pleaded against him, he would be barred by the fine. So, in the circumstances in which we find ourselves, it seemeth that by the later fine levied between the grantor and the tenant the grantor was deprived of the reversion no matter how the tenements had been granted by the form, for the annullment of the reversion constituteth a fee simple to the effect that [Nicholas] could recover by the mortdameestor or by writ of right. But though he may have divers forms of recovery the effect of them is all the same, and since in one recovery the fine will bar him, so it will in the other.

Scrope. Let us be in agreement whether the tenements were granted in tail.

BEREFORD C.J. Though such an estate as a fee simple accrue to him after the grantor hath granted the reversion away from himself, and the grantee alienate the estate, the condition of his issue will not thereby be so changed for the worse as to prevent him bringing his recovery in the way he may think most certain : for by the original grant estate accrued to him as well as to his father who purchased ; the which estate

chose en afforcement qar lestat a qai il est priue demort unkor en
 auantage de ly et quant il serra eynz retigne le quel qil voet en
 fee simple ou taylle par qai respounez.

Et diseint qe les tenementz fuerunt donez en fee taille
 prest etc.

Et alii eontra.

Notes from the Record.

I.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 170, Suffolk.

Nicholaus filius Iohannis de Walsham per Adam de Brom custodem suum
 petit uersus Aliciam que fuit vxor Iohannis de Walsham manerium de
 Walsham cum pertinenciis exceptis decem acris terre in eodem manerio
 ut Ius etc. quod Rogerus de Walsham dedit Iohanni de Walsham et heredibus
 de corpore suo exeuntibus Et quod post mortem predicti Iohannis prefato
 Nicholao filio et heredi predicti Iohannis descendere debet per formam dona-
 tionis predictae etc. Et vnde Idem Nicholaus dicit quod predictus Rogerus
 dedit predictum manerium predicto Iohanni tenendum in forma predicta
 per quod donum Idem Iohannes fuit seisisus de eodem manerio in dominico
 suo vt de feodo et iure secundum formam etc. tempore pacis tempore domini
 Edwardi patris domini Regis nunc Capiendo inde explecias ad valenciam etc.
 Et quod post mortem etc. Et inde producit sectam etc. Et profert quandam
 cartam sub nomine predicti Rogeri factam predicto Iohanni que predictam
 formam donationis testat etc.

Et Alicia venit et defendit Ius suum quando etc. Et dicit quod non
 debet eidem Nicholao inde ad presens respondere Quia dicit quod predictus
 Rogerus dedit predicta tenementa predicto Iohanni de Walsham in feodo
 simplici. Dicit reuera quod alias in Curia domini Edwardi Regis patris
 domini Regis nunc in Octabis sancti Michaelis anno regni sui vicesimo primo
 coram Iohanne de Metyngham et sociis suis Iusticiariis ipsius Regis hic leuauit
 quidam finis inter predictum Iohannem de Walsham querentem et predictum
 Rogerum impredientem de predicto manerio cum pertinenciis etc. per quem
 finem predictus Rogerus recognouit predictum manerium cum pertinenciis
 esse Ius ipsius Iohannis vt illud quod Idem Iohannes habuit de dono predicti
 Rogeri Et pro hac etc. Idem Iohannes concessit predicto Rogero et Isabelle
 vxori eius predictum manerium cum pertinenciis habendum et tenendum
 eisdem Rogero et Isabelle de predicto Iohanne et heredibus suis tota vita
 ipsorum Rogeri et Isabelle Et post decessum ipsorum Rogeri et Isabelle
 predictum manerium cum pertinenciis integre reuenteretur ad predictum
 Iohannem et heredes suos tenendum de capitalibus dominis feodi illius per
 seruicia que ad illud manerium pertinent imperpetuum etc. Et profert

cannot be defeated by aught done in addition, for the estate, in the creation of which he was a party, still surviveth in his favour; and when he shall be in possession, let him hold it either in fee simple or in tail as it best liketh him. Therefore answer.

And they said that the tenements were granted in fee tail, ready etc.

And the other side joined issue.

Notes from the Record.

I.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 170, Suffolk.

Nicholas, son of John of Walsham, by Adam of Brome, his guardian, claimeth against Alice that was wife of John of Walsham the manor of Walsham with the appurtenances saving ten acres of land in the same manor as his right etc., which Roger of Walsham granted to John of Walsham and to the heirs of his body issuing, and which after the death of the aforesaid John ought, by the form of the aforesaid grant etc., to descend to the aforesaid Nicholas, son and heir of the aforesaid John. And in respect of this the same Nicholas doth say that the aforesaid Roger granted the aforesaid manor to the aforesaid John to hold in the form aforesaid, in virtue of which grant the same John was seised of the same manor in his demesne as of fee and right according to the form etc. in time of peace, in the time of the lord Edward, father of the lord King that now is, taking esplees thence to the value etc.; and that after the death etc. And he produceth suit etc. thereof and doth tender a certain charter in the name of the aforesaid Roger made to the aforesaid John which doth witness the aforesaid form of gift etc.

22nd day of
March in the
sixth year.

And Alice doth come and doth deny the right of Nicholas when etc., and she saith that she ought not at present to answer the same Nicholas thereof, for she saith that the aforesaid Roger granted the aforesaid tenements to the aforesaid John of Walsham in fee simple. She saith that in fact at other time in the Court of the lord King Edward, father of the lord King that now is, in the octaves of St. Michael in the twenty-first year of his reign, before John of Mettingham and his companions, Justices of the said King, a certain fine was levied here between the aforesaid John of Walsham, complainant, and the aforesaid Roger, impedient, in respect of the aforesaid manor with the appurtenances etc., by which fine the aforesaid Roger acknowledged the aforesaid manor with the appurtenances to be the right of the same John as that which the same John had by the grant of the aforesaid Roger; and in consideration of this etc. the same John granted to the aforesaid Roger and to Isabel, his wife, the aforesaid manor with the appurtenances to have and to hold to the same Roger and Isabel of the aforesaid John and his heirs for the whole lives of the same Roger and Isabel; and after the death of the same Roger and Isabel the aforesaid manor with the appurtenances was wholly to revert to the aforesaid John and his heirs to hold for ever of the chief lords of that fee by the services which appertain to that manor etc. And she doth tender a part of the aforesaid fine which

Notes from the Record—continued.

partem finis predicti que hoc testatur etc. unde cum predictus Nicholaus sit heres tam predicti Rogeri quam predicti Iohannis sanguine et sit infra etatem petit iudicium si eidem Nicholao contra tenorem finis predicti qui recordum in se gerit et per quem finem feodum simplex reseruebatur in personam predicti Iohannis patris ipsius Nicholai ante etatem suam aecio competere possit secundum formam donacionis predictae maxime cum Idem Nicholaus ante legitimam etatem suam pars esse non potest ad predictum finem cognoscendum seu dedicendum nec etiam decernere sciat dum infra etatem existit quam aecionem pro comodo suo attemptare debeat in hac parte etc.

Et Nicholaus dicit quod predictus Iohannes pater suus primum statum quem habuit in predictis tenementis adeptus fuit de dono predicti Rogeri iuxta formam carte predictae diu ante tempus predicti finis leuati si quis etc. nec finis quem predicta Alicia allegat leuatum fuisse de predictis tenementis prebet contrarium forme donacionis predictae supponit enim finis ille donum precedens quod quidem donum Idem Nicholaus paratus est verificare factum fuisse in feodum talliatum sicut predictum est ad quam verificacionem predicta Alicia non respondet unde petit iudicium etc.

Et Alicia dicit quod ipsa non habet necesse ad aliquam verificacionem quam predictus Nicholaus ei pretendit in contrarium finis predicti respondere Dicit reuera sicut prius quod ex quo predictus Nicholaus est infra etatem nec potest finem predictum cognoscere seu dedicere petit iudicium si idem Nicholaus ante legitimam etatem suam debeat inde responderi etc.

Et super hoc Dies datus est eis de audiendo iudicio suo hic In Octabis Purificacionis in eodem statu quo nunc saluis partibus racionibus suis hinc inde dicendis etc. Postea continuato processu hinc inde vsque in Octabis Sancti Iohannis Baptiste anno regni domini Regis nunc octavo veniunt partes predictae Et predicta Alicia respondet vterius Et dicit quod cum predictus Nicholaus per breue suum supponit predictum Rogerum dedisse predictum manerium excepti etc. predicto Iohanni tenendum sibi et heredibus suis de corpore suo exentibus Idem Rogerus non dedit manerium illud predicto Iohanni tenendum in forma predicta sicut predictus Nicholaus dicit Et de hoc ponit se super patriam Et Nicholaus similiter Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Martini in xv. dies xij. etc. per quos etc. et qui nec etc. ad recognizandum etc. Quia tam etc.

II.

Feet of Fines, 21 & 22 Edw. I., File 42, Case 216, No. 13, Suffolk.

Hec est finalis concordia facta in Curia domini Regis apud Westmonasterium In Octabis sancti Michaelis Anno Regni Regis Edwardi filii Regis Henrici vicesimo primo Coram Iohanne de Metyngham Roberto de Hertford

Notes from the Record—continued.

doth witness this etc.; and in respect of this she asketh judgment whether, seeing that the aforesaid Nicholas is heir of the blood both of the aforesaid Roger and of the aforesaid John and is within age, any right of action can accrue to the same Nicholas according to the form of the grant before his full age, contrary to the tenor of the aforesaid fine, which is of record in itself and by which fine a fee simple was reserved in the person of the aforesaid John, father of the same Nicholas, especially since the same Nicholas cannot be a party to admitting or denying the aforesaid fine before his lawful age, neither also can he determine, while he continueth within age, what course he ought, in his own interest, to pursue in these circumstances etc.

And Nicholas saith that the aforesaid John, his father, acquired the former estate which he had in the aforesaid tenements by the grant of the aforesaid Roger according to the form of the aforesaid charter a long time before the date of the levying of the aforesaid fine, if any etc., nor doth the fine which the aforesaid Alice doth allege was levied in respect of the aforesaid tenements assert aught that is opposed to the form of the aforesaid grant; for that fine doth suppose a grant precedent, which grant the same Nicholas is ready to aver was made in fee tail as is aforesaid, to which averment the aforesaid Alice doth not answer; and thereof he asketh judgment etc.

And Alice saith that she is not bound to answer any averment which the aforesaid Nicholas offereth to her against the aforesaid fine. She saith as before that in truth the aforesaid Nicholas, because he is within age, can neither admit nor deny the aforesaid fine, and she asketh judgment whether the same Nicholas ought to be answered thereof before his lawful age etc.

And thereupon a day is given them to hear their judgment here in the octaves of the Purification in the same state in which they now are, the rights of the parties to state their arguments being reserved over to them etc. Afterwards, process being continued herein until the octaves of St. John the Baptist in the eighth year of the reign of the lord King that now is the aforesaid parties come and the aforesaid Alice maketh further answer; and she saith that whereas the aforesaid Nicholas doth by his writ suppose that the aforesaid Roger granted the aforesaid manor saving etc. to the aforesaid John to hold to himself and the heirs of his body issuing, the same Roger did not grant that manor to the aforesaid John to hold in the aforesaid form as the aforesaid Nicholas doth say. And of this she putteth herself upon the country. And Nicholas doth the like. So the Sheriff is ordered to make come here on the quindene of St. Martin twelve etc. through whom etc., and who are neither etc. to make recognition etc., because both etc.

II.

Feet of Fines, 21 & 22 Edw. I., File 42, Case 216, No. 13, Suffolk.

This is the final agreement made in the Court of the lord King at Westminster in the octaves of St. Michael in the twenty-first year of the reign of King Edward, son of King Harry, before John of Metingham, Robert of

Notes from the Record—*continued.*

Elia de Bekyngham et Petro Malorre Iusticiariis et aliis domini Regis fidelibus tunc ibi presentibus Inter Iohannem de Walsham querentem et Rogerum de Walsham impediētem per Iohannem de Hauerhulle positum loco suo ad lucrandum uel perdendum de manerio de Walsham cum pertinenciis vnde placitum warantie carte summonitum fuit inter eos in eadem Curia Scilicet quod predictus Rogerus recognouit predictum manerium cum pertinenciis esse Ius ipsius Iohannis vt illud quod idem Iohannes habet de dono predicti Rogeri Et pro hac recognicione fine et concordia idem Iohannes cessit predicto Rogero et Isabelle vxori eius predictum manerium cum pertinenciis habendum et tenendum eisdem Rogero et Isabelle de predicto Iohanne et heredibus suis tota vita ipsorum Rogeri et Isabelle Reddendo inde per Annum vnā Rosam ad festum Natiuitatis sancti Iohannis Baptiste pro omni seruicio consuetudine et exaccione Et predictus Iohannes et heredes sui warantizabunt acquietabunt et defendent eisdem Rogero et Isabelle predictum manerium cum pertinenciis per predictum seruiciū contra omnes homines tota vita ipsorum Rogeri et Isabelle Et post decessum predictorum Rogeri et Isabelle predictum manerium cum pertinenciis integre reuertatur ad predictum Iohannem et heredes suos quiete de heredibus ipsorum Rogeri et Isabelle Tenendum de capitalibus dominis feodi illius per seruicia que ad illud manerium pertinent imperpetuum.

11. COLCHESTER v. THE ABBOT OF COLCHESTER.¹I.²

De Auo ou le tenant dit qe les tenementz sont en Burgage et devisables iugement etc. Et pus le demandant dit qe les tenementz sont tenutz de vn l. et vnqes furent deuisable pus temps de memorie prest etc. Et pus le tenant dit qe laelle [sic] demaudant ne morust seisi prest etc. et alii eontra.

Gilberd de Colcestre porta vn bref de Ael vers labbe de Colcestre des tenementz en Westhumblond en le suburbe de Gloucestre et counta de la seisine seon ael descendant a luy.

Denum. Les tenementz sunt en la suburbe de Gloucestre et toux les tenementz en la ville de Gloucestre sunt diuisables ou nul bref de possessioun court etc. et cesti est vn bref de possessioun iugement du bref.

¹ Reported by B. H, M, X, and Z. Names of the parties from the Plea Roll.

² Text of (I) from B.

Notes from the Record—continued.

Hertford, Ellis of Beckingham and Piers Mallory, Justices, and other of the lord King's faithful subjects then there present. Between John of Walsham, complainant, and Roger of Walsham, impediēt, by John of Haverhill, put in his place to gain or lose, of the manor of Walsham with the appurtenances, of which a plea of warranty of charter was summoned between them in the same Court; to wit, the aforesaid Roger recognized the aforesaid manor with the appurtenances to be the right of the said John as that which the same John hath by the grant of the aforesaid Roger; and in consideration of this recognition, fine and agreement the same John ceded to the aforesaid Roger and Isabel, his wife, the aforesaid manor with the appurtenances to have and to hold to the same Roger and Isabel of the aforesaid John and his heirs all the life of the same Roger and Isabel, rendering therefor every year a rose on the Feast of the Nativity of St. John the Baptist for all services, customs and exactions. And the aforesaid John and his heirs will warrant, acquit and defend to the same Roger and Isabel the aforesaid manor with the appurtenances by the aforesaid service against all men all the life of the same Roger and Isabel. And after the death of the aforesaid Roger and Isabel the aforesaid manor with the appurtenances is wholly to revert to the aforesaid John and his heirs without disturbance by the heirs of the said Roger and Isabel, to hold of the chief lords of that fee for ever by the services which pertain to that manor.

11. COLCHESTER v. THE ABBOT OF COLCHESTER.¹

I.

Writ of ael where the tenant said that the tenements claimed were held by burgage tenure and were devisable and asked judgment. The claimant said afterwards that the tenements were held of one J. and that they had never been devised within the time of memory; and he offered to aver as much. And afterwards the tenant said that the claimant's grandfather did not die seised, and offered to aver this. Issue was then joined.

Gilbert of Colchester brought a writ of ael against the Abbot of Colchester claiming tenements in West Donyland in the suburb of Colchester²; and he counted of the seisin of his grandfather and descent to himself.

Denham. The tenements are in the suburb of Colchester, and all the tenements in the vill of Colchester are devisable, and no possessory writ runneth in respect of them etc., and this writ is a possessory writ. Judgment of the writ.

¹ See the Introduction, p. xxxiv above.

² Corrected from the Record here and throughout the report.

Caunt. Donques distes vous qe toux les tenementz qe sont en Gloucestre etc. et nous voloms anerer nostre bref.

Hing. Vous supposez par vostre bref qe partie des tenementz sunt en la suburbe de Gloucestre a ceo dioms nous qe vostre bref etc. jugement etc.

Scrop. Vous volietz dire qe partie des tenementz qe sunt en demande sunt en la suburbe de Gloucestre il vous couent dire come bien des tenementz sunt en Gloucestre pur ploe etc. qe pust estre qe nous dirrions noun etc.

Denum. Si vn acre de terre seit en Gloucestre vostre bref ne vaut rien.

Berr. Vostre bref suppose qe partie des tenementz sunt en Gloucestre etc. et il dist qe toux les tenementz etc. et qe toux sunt diuisible par qei si vous ne poet meyntenir vostre bref en autre manere vostre bref ne vaut rien qe si seiunt en Gloucestre vostre bref est a terre.

Scrop. Sire vous veetz bien coment il voillent abatre nostre bref pur ceo qe toux les tenementz etc. la vous dioms nous qe par tant ne pount il nostre bref abatre pur ceo qe les tenementz sunt en la mayn vn Abbe qe ne pust deuiser etc.

Denum. Tut soient les tenementz en la mayn vn Abbe pur ceo nensiwt il pas qe les tenementz sunt attret hors de lour vsage qe si les tenementz deuenent en autri mayn apres ces houres etc. il pust deuise faire etc. par qei etc.

Herle. Pust estre etc. qe labbe les auoit par devys.

Berr. Tut soit labbe ore seisi de ceux tenementz pur ceo ne ensiwt il pas qe eux soient hors du lour vsage etc.

Scrop. Nous uous dioms qe les tenementz qore sunt en demande sunt tenutz de vn Iohan etc. sauntz devys etc. puy temps de memorie prest¹ etc. par fealte et par les seruices de demi mare par aun qe ceux tenementz tint dil honour de Bolone et vous dioms outre qil ny auoit vnqes devys fait de ceux tenementz puy le temps de memorie prest etc.

Denum. Tut soit qe les tenements ne furent vnqes devis et ico puisse mustrer qe les tenementz qe sunt deynz la ternaunce etc. ount este devise assez me suffist etc. Et dantrepart les tenementz de

¹ The *prest* is superfluous here, as it occurs later.

Cambridge. Do you say, then, that all the tenements that be in Colchester are devisable? We are ready to aver our writ.

Ingham. By your writ you suppose that some of the tenements are in the suburb of Colchester. To that we say that your writ etc.¹ Judgment etc.

Scrope. If you want to say that some of the tenements claimed are in the suburb of Colchester you must say in your plea how many of the tenements are in Colchester, for it may be that we shall deny etc.

Denham. If a single acre of the land be in Colchester your writ is worth naught.

BEREFORD C.J. Your writ doth suppose that some of the tenements are in Colchester etc., and the tenant saith that all the tenements [are in Colchester] and that they are all devisable, and so if you cannot support your writ in some other fashion your writ is worth naught; for if the tenements be in Colchester your writ topples to the ground.

Scrope. Sir, you see how they are trying to abate our writ on the ground that all the tenements etc.; but we tell you that they cannot abate our writ in that way, for the tenements are in the hand of an Abbot who cannot devise etc.

Denham. Even though the tenements be in the hand of an Abbot, it doth not follow therefrom that the tenements are drawn outside the custom characteristic of them; for if the tenements should in the future come into the hand of another etc. he could devise them etc., and therefore etc.

Herle. Peradventure the Abbot had them by devise.

BEREFORD C.J. Though the Abbot be now seised of these tenements, it doth not therefore follow that they are not subject to their custom etc.

Scrope. We tell you that the tenements which are now claimed are holden of one John etc. without having been devised etc. within the time of memory, by fealty and the services of half a mark a year, and John held these tenements of the honour of Boulogne, and we tell you further that no devise of these tenements hath ever been made within time of memory; [and all this we are] ready etc.

Denham. Though it be a fact that these tenements have never been devised, yet if I can show that [other] tenements within the tenancy etc. have been devised, that will be sufficient for my purpose etc. And, moreover, the tenements in the suburb cannot be of other

¹ This 'etc.' may probably be expanded into 'is bad if any one of the tenements be in Colchester.'

la suburbe ne pount estre de autre tenure qe ceux de la ville mes ceus de la ville sunt diuisibles par consequens etc.

Malm. Si tenementz soient demandetz par le nuper obiit com tenements departables et ieo puyssse monstrier qe les tenementz sunt en chivalrie tenuz la partie nauendra mye adire qe les tenementz ne¹ sont departables sauntz dire departitz sic hic.

Berr. De rien semblable qe ceux tenementz sunt en ville de Burgh et en meynte ville de Burgh sunt tenementz qe vnqes ne feurunt deuises et si sunt il deuissables par qei si les tenementz soient de tiel condicioun vous pledet mout en vain.

Toud. En ville de Burgh poent estre tenementz de diuerse fees et coment qil dient qe ceux tenementz etc. nous vous dioms qe ceux tenementz ne sont mye Burgage qar Burgage est proprement tenementz qe sunt tenuz de Roi en chief par certeyn rente en ville de Burgage et nous auoms dit qil sunt tenuz dautri etc. par qei sil voillent enioyer de lour Responce il couent qil dyunt a qi devise et par qi et qil die qe autres tenementz de mesme la tenure qe ceo est soient deuissables.

Et postea *Denom* tendi lauerement qe lael ne morust pas seisi et alius econtra et sic ad patriam.

II.²

Ael.

Richard de Colecestre porta son bref de Ael vers le Abbe de Colecestre et demaunda vn mies od les apurtenaunces en Hungesdone en le suburbe de colecestre dount vn Huberd son Ael fut seisi et murust seisi de Huberd descendi le fee et le demayn a William com a fiz de William a Richard qe ore demaunde.

Denom. Nous vous dioms qe les tenementz en le suburbe sunt deuissables et demaundoms iugement de ceo precipe de possessioun.

Scrop. Nous vous dioms qe ceus tenementz sont mie deuissables.

Denom. Ceo nest vn respouns vostre bref suppose qe les tenementz sont en le suburbe de Colecestre qe sont de meinne la condicioun com les tenementz del Bourth qe sont deuissables qe les tenementz sont

¹ Expuncted for erasure.

² Text of (II) from H.

tenure than those in the vill, but those of the vill are devisable, and therefore etc.

Malberthorpe. If tenements be claimed by a writ of *nuper obiit* as partible tenements and I can show that the tenements are held by knight's service, the claimant will not be allowed to say that the tenements are partible unless he say also that they have been divided. So here.

BEREFORD C.J. There is naught analogous there, for these tenements are in a vill where burgage tenure is the custom, and in many a town where burgage tenure is the custom there be tenements which have never been devised, and are yet devisable. If, therefore, the tenements be of this tenure you are pleading altogether in vain.

Toudeby. In a vill where burgage tenure is the custom there may be tenements held in divers ways ; and though they say that these tenements etc., we tell you that these tenements are not held by burgage ; for burgage tenements are, properly speaking, tenements which are holden of the King in chief at a certain rent in a vill where burgage is customary ; and we have said that [these tenements] are holden of other etc. ; and, therefore, if they want to avail themselves of their answer they must say to whom the tenements have been devised and by whom ; and they must say that other tenements held by the same tenure as these are devisable.

And on a later day *Denham* offered to aver that the [claimant's] grandfather did not die seised ; and the other side joined issue, and so to the country.

II.⁴

Ael.

Richard of Colchester brought his writ of ael against the Abbot of Colchester and claimed a messuage together with the appurtenances in West Donyland¹ in the suburb of Colchester, of which one Hubert, his grandfather, was seised, and died seised. From Hubert the fee and the demesne descended to William as his son ; from William to Richard that now claimeth etc.

Denham. We tell you that the tenements in the suburb are devisable, and we ask judgment of this possessory *precipe*.

Scrope. We tell you that these tenements are not devisable.

Denham. That is no good answer. Your writ supposeth that the tenements are in the suburb of Colchester, and such tenements are of the same tenure as the tenements of the borough, which are devisable ;

¹ Corrected from the Record.

en le suburbe de etc. ceo auoms de vostre purchace et quant vous ditez qe touz ne sount mie deuisable ceo nest une respouns kar aseuns pount estre deuisables et ceo nous suffet pur ceo bref abatre.

[*Scrop.*] Ditez quels sount deuisables et quels ne mie.

Denom. Ceo ne fray ieo mie qar il nous suffit si rien de uostre demaunde seit deuisable pur abatre vostre bref.

Berr. Ditez outre.

Caunt. Tenementz esteaunz en mayne de abbe ou de home de religion ne purrunt estre deuises demaundoms iugement si nostre bref pourrunt abatre pur taunt qe les tenementz sount deuisables.

Denom. Si les tenementz venissent hors des maynes le Abbe en autri maynes ils serrount deuisez.

Berr. Ditez outre.

Scrop. Nous vous dioms qe puyz tens de memoyrie les tenementz fuerunt unkes deuisez.

Herel. Nest mie respouns ils sount en lundres milez qe nunkes fuerunt deuisez et si sount deuisables par qay il vous couent respounder si ils soient deuisables ou ne mie.

Scrop. Nous dioms qe les tenementz sount mie deuisables dunk a ceo qe freez vostre excepeioun elere si couient il qe vous ditez quant diuisez ou entre qy eynz qe vous facetz nostre tenementz a la commune ley deuisables.

Denom. Nanil nous voloms auerer qe la generalte si est de telle condieion dount vostre soul tenement de fere excepte de la condicioun de estre deuisable si bosoygnerait il qe vous le daisez entre qy le deuise sei fet et ne fut mie deforcee pur ceo qe le tenement ne fut mie deuisable del hure qe ieo le uoile auerer pur la generalte.

Toudeby. Ceus ne sount mie de meyme la condicioun com ceux del burgh qar ceux del burgh tenentur du roy en fraunk burghage et le suburbe est tenu de Iohan de listone del fee de peuerel par les seruices de vn demie mare par an.

Berr. Ceo ne proue nient qe ils ne sount nunkor deuisables fut il tailliez quant taillage il venount ouesqe ceux de la vile.

Scrop. vit qe il ne poit auerer qe les tenementz ne fuerunt mie deuisables et ioint vn auerement qe le Ael murust mie seisi.

Et alii econtra.

for the tenements are in the suburb of etc. and we have them by our purchase; and when you say that all are not devisable, that is no [good] answer, for some may be devisable; and that is sufficient for us to abate this writ.

[*Scrope*.] Say which are devisable and which not.

Denham. I shall not do that, for it is sufficient to enable us to abate your writ if aught of your claim be devisable.

BEREFORD C.J. Say over.

Cambridge. Tenements that be in the hand of an Abbot or of a man of religion cannot be devised. We ask judgment whether they can abate our writ on the ground that the tenements are devisable.

Denham. If the tenements came out of the possession of the Abbot into the possession of some other they could be devised.

BEREFORD C.J. Say over.¹

Scrope. We tell you that never since the time of memory have these tenements been devised.

Herle. That is no answer. In London there are thousands [of tenements] which have never been devised and yet are devisable. Therefore you must answer whether these be devisable or no.

Scrope. We say that the tenements are not devisable. You must, then, to make your exception to that quite clear, say when they were devised or between whom, unless you make our tenements devisable by the common law.

Denham. Not so. We will aver that most of them are subject to that custom. If, then, you want to show that your tenements alone are an exception to the custom of being devisable you must say by whom and to whom a devise was made which could not be maintained because the tenements were not devisable, for I will aver for the generality of them.

Toudeby. These tenements are not of the same tenure as those within the borough, for those within the borough are held of the King in frank burgage, and the suburb is held of John of Liston of the fee of Peverel by the services of half a mark a year.

BEREFORD C.J. That doth not prove that they are still undevisable. If they were tallaged when there was a tallage they will rank with those in the vill.

Scrope saw that he could not aver that the tenements were not devisable, and offered an averment that the claimant's grandfather was not seised when he died.

And issue was joined.

¹ The Chief Justice is probably speaking to *Cambridge*.

III.¹

De auo ou fut dit qe les tenementz sont deuissables.

Gilbert de Clare² porta bref de ael vers labbe de Coleceestre des tenementz en Westhomblond et en la suburbe de Coleceestre de la seisine vn Robert son ael.

*Herle.*³ La ou il demande ceux tenementz en Westhomblond et en la suburbe de Coleceestre nous vous dioms qe ceux tenementz demandez sont en la suburbe de Coleceestre et nous vous dioms qe les tenementz en la suburbe de Coleceestre sont deuissables ou nul bref de possessioun gist et demaundoms iugement du bref.

*Scrop.*⁴ Vous veez bien sire coment le bref est porte vers vn abbe qe ne put deuis faire par qei nentendoms mie qen la bouche del abbe cest excepcioun gise.

Denom. Si les tenementz auant ceo qil soient deuises ou donez a vn homme de religion soient deuissables quant il soient venuz en mains de Religiou par taunt nest mie la nature chaunge.

*Berr.*⁵ Sont les tenementz deuissables ou ne mie respoudez a ceo.

Caunt. Les tenementz sont en Westhomblond et en la suburbe com nostre bref voet et nous dioms qe ceux tenementz sont tenuz del honour de Peuerel et de vn Iohan de Westhomblond par les seruices dun demi mare par an et vous dioms qe les tenementz ne furent vnqes deuises ⁶puis temps de memorie⁷ prest etc.

*Herle.*⁸ Donques sumes nous a vn qe les tenementz en Coleceestre sont deuissables et ceux tenementz qe sont en la suburbe qest de la fraunchise de Coleceestre et tot dune⁹ condicioun si generalement de touz les tenementz etc. et vous nauendrez mie quant a la parcele a dire qe vnqes deuises sanz dire qe les tenementz ne sont pas deuissables.

Scrop. De pus qe nous auoms mostre qe les tenementz sont tenuz a la commune lei et ne mie en manere de Borgage et de si long temps vous nauendrez mie a dire qe les tenementz sont deuissables sanz dire par qi et a qi deuises.

Malm. ad idem. Si tenementz soient demandez par vn nuper obiit com tenementz departables et ieo puisse mostrer qe les tenementz

¹ Text of (III) from X collated with M. ² Gloucester, M. ³ Inge *Herle Toud.*, M. ⁴ *Caunt et Scrop.*, M. ⁵ M adds a *Toud.* ⁶⁻⁷ Added from M. ⁸ *Denom.*, M. ⁹ deneye [sic]. M.

III.

Writ of ael wherein it was said that the tenements claimed were devisable.

Gilbert of Colechester¹ brought a writ of ael on the seisin of one Robert, his grandfather, against the Abbot of Colchester in respect of tenements in West Donyland and in the suburb of Colechester.

Herle. Whereas he is claiming these tenements in West Donyland and in the suburb of Colchester, we tell you that these tenements that are claimed are [all] in the suburb of Colchester, and we tell you that the tenements in the suburb of Colchester are devisable and that no possessory writ lieth therein; and we ask judgment of the writ.

Scrope. You see, sir, that the writ is brought against an Abbot who cannot devise, and so we do not think that this exception lieth in the mouth of the Abbot.

Denham. If the tenements were devisable before that they were devised or given to a man of religion, their nature is not changed merely by the fact that they have come into the possession of a man of religion.

BEREFORD C.J. Are the tenements devisable or not? Answer to that.

Cambridge. The tenements are in West Donyland and in the suburb, as our writ layeth, and we tell you that these tenements are holden of the honour of Peverel and of one John of West Donyland by the services of half a mark a year, and we tell you that the tenements have never been devised within the time of memory; ready etc.

Herle. Then we are agreed that tenements in Colchester are devisable, and that these tenements [now claimed] are in the suburb, which is of the liberty of Colchester and so generally of the same nature as that of all the tenements etc.; and you will not be received to say in respect of a parcel of the tenements that they have never been devised unless you say that the tenements are not devisable.

Scrope. Since we have shown that the tenements are holden under the common law and not by the custom of burgage, and for such a long time past, you will not be received to say that the tenements are devisable without saying by whom and to whom they have been devised.

Malberthorpe ad idem. If tenements be claimed by a writ of *nuper obiit* as tenements which are partible and I can show that the tene-

¹ Corrected from the Record.

sount tenuz en cheualrie la partie nauendra mie adire qe les tenementz sount departables sanz dire departis et sic hic.

Berr. De rien semblable qe ceux tenementz sount en ville de Borgage qe sount tenuz qe vnqes ne furent deuises et si sont il deuissables par qe les tenementz sont de tel condicioun qe vous pledez mout en vain.

Toud. En ville de Borgage poient estre tenures¹ de diuers fees et coment qil dient qe ceux tenementz ²etc. nous vous dioms qe ceux tenementz³ ne soient mie Borgage qar Borgage est proprement tenementz qe sont tenuz de Roi en chief par certeine rende⁴ [*sic*] en ville de Burghage Et nous auoms dit qil sont tenuz daltre etc. vt supra par qe sil vellent enioier de lour respouns il couent qil dient a qi deuisez et par qi et qil die qe ⁵lautres tenementz de mesme la tenure⁶ soient sount⁷ deuissables etc. ⁸pus ca⁹ etc.

Postea¹⁰ *Denom* tendi lauerement qe la ade [*sic*] ne morust mie seisi et alii econtra ¹¹et ideo ad patriam¹² etc.

IV.¹³

En vn bref de Ael porte vers vn Abbe des tenementz en le suburbe de G. qe dit qe touz les tenementz le mesme la ville sunt deuissables ou nul bref de possesioun court etc. Lautre dit qil nauendreit a ceo dire de pus qe les tenementz furent en la seisine vn Abbe qe ne poet deuise et non valuit qar par taunt ne poent estre tret hors de lour vsage issint qe quele heure qil seyent deuenutz eu la main de secular qil ne purra deuise faire etc. et pus il allega qe vnqes pus temps de memore ne furent les tenementz deuisez et dit outre qil furent dautri [*sic*]¹¹ tenuro qar les tenementz del suburbe sount tenuz de B. et ceux de la vile sount tenuz le Roy et issint dautri tenure etc., et sil neust ceo dit ieo crei qe lallegeance [*sic*] de ceo qil ne furent pas deuisez luy eust poy valu et pus furent a issue qe la [*sic*] Ael ne murust pas seisi etc.

¹ tenementz, *M*. ²⁻³ *M* omits. ⁴ Rente, *M*. ⁵⁻⁶ From *M*; *X* has lattornement de mesme lattorne. ⁷ soue, *M*. ⁸⁻⁹ *M* omits. The words seem corrupt and have no intelligible meaning. ¹⁰ Added from *M*. ¹¹⁻¹² *M* omits. ¹³ Text of (IV) from *Z*. ¹¹ We ought to have here either *dautre tenure* or *dautri tenuz*.

ments are holden by knight's service, the claimant will not be received to say that the tenements are partible without saying that they have been [in fact] divided ; and so here.

BEREFORD C.J. There is naught analogous there, for these tenements are in a vill where burgage tenure is customary, where tenements are held that were never devised and yet are devisable ; and therefore the tenements are of such a nature as to make your pleading wholly in vain.

Toudeby. There may be divers kinds of fees in a vill [where tenements are holden] in burgage ; and though they say that these tenements etc. we tell you that these tenements are not held by burgage, for tenements held by burgage are, properly, tenements that are held of the King in chief by a rent certain in a vill where burgage is customary. And we have said that [these tenements] are holden of another etc. as above ; wherefore if they want to avail themselves of their answer they must say to whom they were devised and by whom ; and they must say that other tenements of the same tenure ¹are often devisable etc.²

On a later day *Denham* tendered the averment that the [claimant's] grandfather³ did not die seised ; and issue was joined, and so to the country etc.

IV.

In a writ of ael brought against an Abbot claiming tenements in the suburb of Colchester¹ the Abbot said that all the tenements in the same vill are devisable, and that no possessory writ runneth etc. The other side said that the Abbot would not be received to say that, for the tenements were in the seisin of an Abbot who could not devise ; but this objection was not allowed because the tenements could not be withdrawn for such a reason from the custom to which they were subject, to the effect that when they came into the possession of a secular person he could not devise etc. And afterwards the claimant said that the tenements had never been devised within the time of memory ; and he said further that they were holden by a different tenure ; for the tenements in the suburb are holden of B., and those in the vill are holden of the King, and so they are of a different tenure etc. ; and, if he had not said that, I believe that the allegation that they had never been devised would have availed him little. And afterwards they were at issue upon the averment that the grandfather did not die seised etc.

¹⁻² 'have often been devised' would be a better rendering of what *Toudeby* probably said. See the text and the

footnote thereon.

³ See the text.

⁴ Corrected from the Record.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 170, Essex.

Hubertus de Colecestre petit uersus Abbatem de Colecestre vnum messuagium Centum acras terre quatuor acras prati sex acras pasture sexaginta acras bosci Centum acras bruiere et quadraginta solidatas redditus cum pertinentiis in Westdonylaunde et suburbio Colecestre De quibus Ricardus Haunng auus predicti Huberti cuius heres ipse est fuit seisisus in dominico suo vt de feodo die quo obiit etc. Et vnde Idem Hubertus dicit quod predictus Ricardus auus etc. fuit seisisus de predictis tenementis in dominico suo vt de feodo tempore pacis tempore domini Henrici Regis aui domini Regis nunc Capiendo inde explecias ad valenciam etc. Et inde obiit seisisus etc. Et de ipso Ricardo descendit feodum etc. cuidam Margerie vt filie et heredi etc. Et de ipsa Margeria descendit feodum etc. cuidam Huberto vt filio et heredi etc. Et de ipso Huberto quia obiit sine herede de se descendit feodum etc. isti Huberto qui nunc etc. vt fratri et heredi etc. Et inde producit sectam etc.

Et Abbas per Iohannem Parles attornatum suum venit et defendit Ius suum quando etc. Et bene defendit quod predictus Ricardus auus etc. non obiit seisisus de predictis tenementis etc. sicut predictus Hubertus dicit Et de hoc ponit se super patriam Et Hubertus similiter Ideo preceptum est vicecomiti quod venire faciat hic In Octabis Purificacionis beate Marie xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc.

12. NEWMARKET v. HOLBEACH.¹I.²

Cui in vita porte vers vn homme qe dist qil tint les tenementz etc. par la ley Dengleterre et pria cyde etc. ou le demandaunt le countreplede pur ceo qe leide priere feut a contrier de seon brief etc. et feut oste etc.

Thomas de Nyenmarche et lore sa femme porterunt lonr cui in vita vers laurenee de Heleloche et demanderunt vers luy certeyne tenementz en hinton en les queux il nad entre si noun par Adam de F. son Baron qe ceo luy lessa etc. a qi etc.

Migg. Nous nauoms rienz en les tenementz si noun par la ley dengleterre del heritage vn l. etc. sanz etc. et prioins eide etc.

¹ Reported by B, C, E, H, M, and X. Names of the parties from the Plea Roll. ² Text of (1) from B.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 170, Essex.

Hubert of Colchester claimeth against the Abbot of Colchester a messuage, a hundred acres of land, four acres of meadow, six acres of pasture, sixty acres of woodland, a hundred acres of heath and a rental of forty shillings, together with the appurtenances, in West Donyland and in the suburb of Colchester, of which Richard Having, grandfather of the aforesaid Hubert, whose heir Hubert is, was seised in his demesne as of fee on the day on which he died etc. And in respect of which the same Hubert saith that the aforesaid Richard, grandfather etc., was seised of the aforesaid tenements in his demesne as of fee in time of peace, in the time of the lord King Harry, grandfather of the lord King that now is, taking therefrom esplees to the value etc.; and he died seised thereof etc. And from the same Richard the fee etc. descended to a certain Margery as daughter and heir etc. And from that same Margery the fee etc. descended to a certain Hubert as son and heir etc. And from that Hubert, because he died without heir of his body, the fee etc. descended to this Hubert¹ who now claimeth, as brother and heir etc. And he produceth suit etc. thereof.

And the Abbot by John Parles, his attorney, cometh and denieth the right of Hubert when etc. And he doth wholly deny that the aforesaid Richard, grandfather etc., died seised of the aforesaid tenements etc. as the aforesaid Hubert doth say. And of this he doth put himself upon the country. And Hubert doth the like. So the Sheriff is ordered that he make come here in the octaves of the Purification of Blessed Mary twelve etc. by whom etc., and who are neither etc. to make recognition etc., because both etc.

12. NEWMARKET v. HOLBEACH.²

I.

A *cui in vita* was brought against one who said that he held the tenements etc. by the law of England, and he prayed aid etc. The claimant counterpleaded this on the ground that a prayer for aid was contrary to the tenor of his writ etc.; but this was not allowed.

Thomas of Newmarket and Laura, his wife, brought their *cui in vita* against Lawrence of Holbeach and claimed certain tenements in Hunton from him, ³into which he had not entry save by Adam of F., Laura's [former] husband, who leased them to him etc., whom she etc.⁴

Miggeley. We have naught in the tenements save by the law of England, which are of the heritage of one J. etc., without whom etc., and we pray aid etc.

¹ There was nothing unusual at this time in two brothers having the same name.

² See Introduction, p. xxxv. above.

³⁻⁴ This, of course, is merely the plaintiff's allegation as set out in the writ.

Russel. Eyde ne deiuetz auer qe nostre bref veot en les queux vous nauetz entre si noun etc. et vous distes qe vous tenes par la ley dengleterre vostre respounse namonte a autre rien mesqe vous nentrates pas par nostre Baroun et nous voloms auerer nostre bref.

Migg. Nous vous dioms qe vn W. Gulard morust seisi de ces tenementz ensemblement etc. apres qi mort etc. les tenementz descendirent a lore et a M. com a seors et vn heir. Lore prist Baron Adam Margarie prist Laurence vers qi le bref est porte etc. entre les queux la purpartie ceo fist de tout le eritage W. issint qe ceux tenementz qore sont en demande ferunt [*sic*] alotes a la purpartie Margerie etc. et Margerie est mort et nous tenoms la purpartie vt supra iugement etc.

Bing. Nostre bref suppose qe vous entrates par nostre Baron etc. et par la alienacioun etc. vous distes qe les tenementz furunt alotes a la purpartie Margerie etc. qest le reuers de nostre bref et nous voloms auerer nostre bref.

Migg. A ceo ne deiuetz auenir sauntz moustrer etc. comment ele auensit etc.

Ingh. Nous voloms auerer qe ceux tenementz sunt en le dreit lore et qe seon baroun a vous aliena et cest estat auietz vous puy en cea continue prest etc.

Migg. Nous auoms moustre nostre estat a la court et auoms attache le fee et le dreit en la persone etc. Sauntz qi etc. par quei a pleder en le dreit ceo serreit a pleder autre estat qe nous auoms qe nous auoms fraunctenement par quei nous ne poms en le dreit pleder.

Berr. Il dient qe ceux tenementz furent en la seisine lour comun auncestre descendi tanqe a vous et a Margerie femme Laurence ensi qe ceux tenementz furunt alotez a la purpartie etc. sil semble qil vous couent moustrer coment vous auenistes etc.

Hing. Ceux tenementz furunt alotez a la purpartie lore prest etc.

Migg. Ore prioms eyde desicom le dreit est a trier de la purpartie.

Russ. Nous nauoms qe faire en qi purpartie il furunt alotez qe nous voloms auerer qe ceo feust le dreit lore et qe vous entrates come nostre bref suppose.

Migg. La ou nous auoms dist qe ceux tenementz furunt alotez

Russell. You ought not to have aid, for our writ saith 'in the which you have not entry save etc.,' and you say that you hold by the law of England; an answer which amounteth merely to saying that you did not enter by our husband; and we are ready to aver our writ.

Miggeley. We tell you that one William Gulard died seised of these tenements together with etc., and after his death etc. the tenements descended to Laura and to Margery as to sisters and a single heir. Laura took Adam for her husband. Margery took Lawrence, against whom the writ is brought etc. The whole of William's heritage was divided between Laura and Margery, and the tenements which are now claimed were allotted to Margery's share etc. Margery is now dead, and we hold her share *ut supra*. Judgment etc.

Bingham. Our writ supposeth that you entered by our husband etc., and by the alienation etc. You say that the tenements were allotted to the share of Margery etc., which is the contrary of that which we lay in our writ; and we are ready to aver our writ.

Miggeley. You ought not to get to that without showing etc. how she attained etc.

Ingham. We will aver that these tenements are of the right of Laura and that her husband alienated to you, and that you have since then continued your estate in them; ready etc.

Miggeley. We have shown our estate to the Court and we have laid the fee and the right in the person etc., without whom etc. To plead in the right, therefore, would be to plead to an estate other than that which we have, for we have [only] a freehold; and therefore we cannot plead in the right.

BEREFORD C.J. They say that these tenements were in the seisin of their common ancestor, and that they descended to you and to Margery, the wife of Lawrence, and that these tenements [which you are now claiming] were allotted to the share [of Margery]; it seemeth, therefore, that you ought to show how you have acquired [Margery's share].

Ingham. These tenements were allotted to Laura's share; ready etc.

Miggeley. Now we pray aid, since the right in the share is to be tried.

Russell. We are not concerned as to whose share they were allotted, for we will aver that they are of Laura's right, and that you entered in the way laid in our writ.

Miggeley. Whereas we have said that these tenements were allotted

a la purpartie Margerie vous distes a la purpartie lore et a ceo trier ne poms estre partie sauntz etc. et prioms etc.

Russ. Ceo ne dioms poynt mes nous dioms qe ceo feut le dreit Lore et qe seon baroun a vous aliena et de vostre purchatz demesne ne deiuetz eide aner. Et dautrepart a pleder en qi purpartie les tenementz sunt alotes nous plederoms hors de la nature de nostre bref.

Berr. Si vous pledetz en tiele manere vous pledetz malement a luy deyde ouster.

Toud. Ieo pos qe laure fait defaute serreit Iohan receu sil neust etc. a defendre seon dreit.

Hing. Noun serreit qe ieo luy surmettray toux iours qe ceo feut son purchace demesne.

Migg. Il auereit lauerement qe ceux tenementz furent alotiez en la purpartie Margerie etc.

Berr. Il vous dist qe ceux tenementz luy ferunt alotiez en noun de purpartie et aliene a vous par son baroun par qei de cel estat qe vous auez par seon baroun ne deuiez eyde auer.

Et fust ouste del eyde quere tamen.

II.¹

William de Neumerche et Alienore sa femme porterent le cui in vita vers Laurence de Hollork et demanderent certeynes tenementz et disoient en les queus il nad entre si noun par Dauyd baroun mesme cesti Elyanore a qi etc.

Mig. Nous tenoms ceux tenementz apres la mort Margerie nostre femme par la curteysie dengleterre et le fee et le dreyt demoert en la persone vn I. fiz et heir mesme cel etc. sanz qi etc. et prioms eyde.

Will. Si nous grauntoms eyde nous abateroms nostre bref.

Berr. Il semble qe vous estez a isseu de plee qe il suppose qe vous estez entre par le baroun et vous dites qe apres la mort la femme cum del dreyt etc. et par la curteysie etc. et ensy estez vous a trauers a lour entre.

Mug. Nous vous dioms qe vn I. Gobaud fut seisi de ceux tenementz ensemblement oue autres tenementz apres qi mort lez tenementz descenderent a Margerie et a Elyanore ²nostre femme³ qe fuerunt a

¹ Text of (II) from C. ²⁻³ These words are obviously misplaced. They describe Margery, not Eleanor.

to the share of Margery, you say that they were allotted to the share of Laura. We cannot be a party to trying that issue without etc., and we pray etc.

Russell. We do not say that, but we do say that these tenements were the right of Laura, and that her husband alienated them to you, and you ought not to have aid in respect of your own purchase. And, moreover, if we were to plead as to whose share the tenements were allotted we should be pleading outside the nature of our writ.

BEREFORD C.J. If you plead in this fashion, you are pleading badly if you want to bar him from aid.

Toudeby. I put the case that Laura made default. Would John be received to defend his right unless he had etc.?

Ingham. He would not be, for I should always object to him that this was his own purchase.

Miggeley. He would have the averment that these tenements were allotted to Margery's share etc.

BEREFORD C.J. He telleth you that these tenements were allotted [to Margery] as her share and that they were alienated to you by her husband; and therefore you are not entitled to have aid in respect of what you had by her husband.

And he was refused aid; but *quaere*.

II.

William of Newmarket and Eleanor his wife brought the *cui in vita* against Lawrence of Holbeach and claimed certain tenements, saying that Lawrence had no entry therein save by David, [aforetime] husband of that same Eleanor, whom etc.

Miggeley. We hold these tenements since the death of Margery, our wife, by the curtesy of England, and the fee and the right repose in the person of John, son and heir of that same etc., without whom etc., and we pray aid.

Willoughby. If we agree to your having aid we shall abate our writ.

BEREFORD C.J. It would seem that you are pleading at cross purposes, for the claimants say that you entered by [Eleanor's] husband, and you say that it was upon the death of your wife and that you hold by the curtesy etc., as of her right; and so you are not in agreement as to their entry.

Miggeley. We tell you that one J. Gobald was seised of these tenements together with other tenements, upon whose death the tenements descended to Margery, our wife,¹ and Eleanor, who were

¹ See the text and footnote thereon.

ceu tenz couertz de baroun issint qe ceus tenementz ore demandez fuerunt alotez par danyd et Elyanor en la purpartie Margerie nostre femme et issint tent il par la curteysye dengleterre et le fee et le dreyt etc. et prioms eyde.

Berr. Si danyd et Elyanor assignerent ceus tenementz a Margerie et a Laurence pur la purpartie Margerie vous ne poez dire qe ceo est alotement ne qe ceo est assignement seit lalienacioun le baroun.

Russel. Qe lez tenementz ne fuerunt mye alotez en la purpartie Margerie mes qe Laurence est entre par lalienacioun nostre baroun et prioms eyde etc.

Will. Vostre eyde prier ne amountereit a nent plus mes qe vn estrange vendra et defendra vostre dreyt dount vous estez en tenaunce par lalienacioun nostre baroun qe nest pas suffrable de ley.

Toud. Cely qe prie en eyde est deynz age par eas par qei si il eust leyde la parole targereit tanqe a soun age issy qe chescun qe nul dreyt en auoit de sa tenaunce delaereit le demandant de soun dreyt par cel eyde prier qe serreit meschef de ley.

III.¹

Cui in vita.

Thomas de Neumarche et Lore sa femme porterent le cui in vita vers Laurence de Holbeche et demaunderent certeynz tenementz en les queux Laurence nad entre si noun par Adam de Fletwik baroun lauaundite Lore qe ceux luy lessa a qy ele en sa vie etc.

Migg. Ceux tenementz furent assignez en la purpartie II. nostre femme apres la mort W. son pere ou nous tenoms mesmes les tenementz par la curtaisie dengleterre del heritage vn P. fuitz H. saunz qy etc. et prioms eyde de luy.

Wilb. Si nous grauntissoms le eyde nous abateroms nostre bref qe suppose qe vous entrastes par nostre baroun la ou vous dites qe vous tenez les tenementz par la curteysie etc. com del dreyt vostre femme issi ne entrastes mye par le baroun etc. qest countre de nostre bref.

Migg. Nous vous dioms qe ceux tenementz ensemblement od alteres tenementz descenderent a Lore et a H. come a files et heir apres la mort W. entre les quex la purpartie se fist durant la couerture entre

¹ Text of (III) from *E*.

[both] at that time *coverte* with a husband, so that these tenements which are now claimed were allotted by David and Eleanor to the share of Margery, our wife ; and so the tenant holdeth by the curtesy of England, and the fee and the right etc. and we pray aid.

BEREFORD. C.J. If David and Eleanor assigned these tenements to Margery and to Lawrence as Margery's share you cannot say that what was an allotment or an assignment was an alienation by the husband.

Russell. [We are ready to aver] that the tenements were never allotted to Margery's share, but that Lawrence entered by the alienation of our husband, and we pray aid etc.

Willoughby. Your aid-prayer meaneth naught more than that a stranger shall come and defend your right in a tenancy which you have by the alienation of our husband, a thing which the law will not suffer.

Toudeby. Peradventure he is within age whose aid is prayed, in which case, if the defendant had aid, the action would be delayed till his full age, to the effect that one who hath no right to his tenancy might, by this aid-prayer, detain the claimant from his right, which would be an oppressive use of the law.

III.

Cui in vita.

Thomas of Newmarket and Laura, his wife, brought the *cui in vita* against Lawrence of Holbeach and claimed certain tenements into which [they alleged that] he had not entry save by Adam of Fleet, husband of the aforesaid Laura, who leased them to him, whom Laura could not in his lifetime etc.

Miggeley. These tenements were assigned to the share of H., our wife, after the death of W., her father ; and we hold the same tenements by the curtesy of England of the heritage of one P., son of H., without whom etc., and we pray aid of him.

Willoughby. If we granted the aid we should abate our writ which allegeth that you entered by our husband, while you say that you hold the tenements by the curtesy etc., as of the right of your wife, so [alleging] that you did not enter by the husband etc., and that is contrary to the purport of our writ.

Miggeley. We tell you that these tenements, together with other tenements, descended to Laura and to H. as daughters and heir after the death of W. : and they were divided between them, during the coverture between Adam and Laura, his wife, the present claimant.

Adam et Lore sa femme qore demaunde et Laurence et H. sa femme si qe mesmes ceus tenementz furent alotez a la purpartie H. par mesmes ceus Adam et Lore en cel manere entrames nous et prioms eyde etc.

Wilby. Pus la purpartie faite nostre baroun aliena mesmes les tenementz a vous en fee a qy nous ne purrioms coudre dire prest etc. iugement si eyde deuetz auer.

Hle. Si leyde fut graunte et lenfaunt fut deynz age il auerent son age qe serreit duresce.

Wilb. Vous dites qe ceus tenementz furent alotez a la purpartie vostre femme nous dioms qe vous les purchastes de nostre baroun issint qe de vostre purchace demesne estes vous entre par qy le respouns qe vous donetz si est le contrarie de nostre bref le quel bref nous voloms auerer et demaundoms iugement.

IV.¹

Cui in vita.

Lore qe fut la feme dauid de fletwik porta son bref de cui in vita uers laurence de Holbech et demaunda vij. mies et iiij. caruez de terre od les apurtenaunces en Boram etc. en les queux laurence nauoit entre si noun par dauid son baron a qy ele en sa vie etc.

Migg. pur laurence. Sire nous vous dioms qe nous tenoms ceus tenementz par la courtesie de engleterre com du dreit la feme laurence issint qe il ne poet ceus tenementz mener en iugement saunz aide de William fiz Margerie sa feme et prie aide de luy.

Wilghob. Eide ne deuez auer qar vous entrastes par nostre baron.

Migg. Nous ne clamons autre chose forsqe a tenyr a terme de vie par la cortisie de engleterre dount moy attendre [*sic*] vn auerement dount le iugement sei poet fourmyr sur autri dreit iugement si saunz ly denoms ceus tenementz mener en iugement.

Wilghby. Nous vous dioms qe vous entrastes par nostre baron qy ceus lessa a vous vous ditez qe vous tenez de autri dreit reponez al entre.

Migg. Sire nous vous dioms qe William grimbald fut seisi des taunt des tenementz et murust seisi saunz heyr de son cors pur qay les tenementz descendant a Lore et a Margerie com a deux soers et vn heyr

¹ Text of (IV) from *H.*

and Lawrence and H., his wife, in such way that these same tenements were allotted to the share of H. by the same Adam and Laura. In that way we entered, and we pray aid etc.

Willoughby. After the division was made our husband, whom we could not oppose, alienated these same tenements to you in fee; ready etc. Judgment whether you ought to have aid.

Herle. If aid were granted and the infant be within age, he would be allowed his age, and that would involve hardship.

Willoughby. You say that these tenements were allotted to the share of your wife. We say that you had them by purchase from our husband, so that it was by your own purchase you entered. The answer which you make is, consequently, opposed to the tenor of our writ, which writ we are ready to aver; and we ask judgment.

IV.

Cui in vita.

Laura that was wife of David of Flitwick brought her writ of *cui in vita* against Lawrence of Holbeach, and claimed seven messuages and four carucates of land, together with the appurtenances, in Thorne¹ etc. into which Lawrence had not entry save by David, Laura's husband, whom she in his lifetime etc.

Miggeley for Lawrence. Sir, we tell you that we hold these tenements by the curtesy of England as of the right of Lawrence's wife, so that Lawrence cannot bring these tenements into judgment without the aid of William, son of Margery, his wife; and he prayeth aid of him.

Willoughby. You ought not to have aid, for you entered by our husband.

Miggeley. We claim naught more than a tenancy for life by the curtesy of England, and against it you offer us an averment on which any judgment rendered must affect the right of a third party. Judgment whether without that party we ought to bring these tenements into judgment.

Willoughby. We tell you that you entered by our husband who leased the tenements to you. You say that you hold of the right of someone else. Answer to [our allegation of] entry.

Miggeley. Sir, we tell you that William Grimbald was seised of such and such tenements, and he died seised, leaving no heir of his body. The tenements, therefore, descended to Laura and Margery, as two sisters and a single heir. By the assent of David of Flitwick,

¹ Corrected from the Record. Thorne is ten miles north-east of Doncaster.

dout del assent dauyd de Iletwik baron lore et laurence de Holbeche baron Margerie la departie sei fet issi qe ceo parcele qe est ore en demaunde fut alote a la [purpartie] Margerie issi tynt laurence ceus tenementz par la cortisie de engleterre et du dreit Margerie et demaundoms iugement si vous ne diez qe le entre en celle parcele qe est en demaunde ne fut alote a la purpartie ceste Margerie si vous ne facez le assent de la departie fete vn lees par vostre baron si de aide nous pussez barrer.

Russel. Auisez vous coment il est nous voloms auerrer qe nostre baron vous lessa qar si il out graunte le aide il out trauerse son bref demeyn en taunt come il dit qe il nad entre si noun par son baron qe ne poet estre od ceo qe il entra com du dreit sa feme.

Migg. Si il vint deuaunt iugement rendu et priast estre resceu a defendre son dreit ne serroit il mie resceu si serroit.

Herel. Nanil si il fut resceu il acceptat le contrarie de son bref.

Russel. Nous voloms auerrer qe nostre baron luy lessa ceus tenementz iugement si de lees fet a luy meyme aide com il ad prie de iue auer.

Migg. chace nous uoloms auerrer qe ceus tenementz qe sount en demaunde furunt alotez a la purpartie Margerie.

Wilghby. A la purpartie lore nient a la purpartie Margerie prest etc.

Et sic ad patriam.

V.¹

Cui in vita ou celi qe fut suppose [sic] par le baroun dit qil tient par la lei Dengleterre et pria eide etc.

En vn cui in vita—

Migg. Sire nous nauoms rien en les tenementz si noun a terme de vie par la curteisie Dengleterre del heritage vn tiel saunz qi nous ne poms ceus tenementz mener en iugement et prioms eide de ly.

Will. Vous estez entre en ceus tenementz par vostre baroun et ceo suppose nostre bref par qei eide ne deuez auoir. Et dautre part si

¹ Text of (V) from *M* collated with *X*. Headnote from *X*.

Laura's husband, and Lawrence of Holbeach, Margery's husband, a division was made to the effect that this parcel which is now claimed was allotted to Margery's share, so that Lawrence holdeth these tenements by the curtesy of England and of the right of Margery; and we ask judgment whether you can bar us from aid unless you say that entry into this parcel which you are now claiming was not allotted to the share of this Margery and do not admit that the division was made by a lease made by your husband.¹

Russell. Advise yourselves of the facts. We will aver that our husband leased to you—for if he had granted the aid he would have contradicted his own writ, inasmuch as the writ laid that the defendant had not entry save by the claimant's husband, an allegation that is incompatible with the defendant's entry as of the right of his wife.

Migeley. If he [whose aid is prayed] came before judgment rendered and prayed to be received to defend his right, would he not be received? Yes, he would.

Herle. No; if he were received, the claimant would be granting the contrary of his writ.

Russell. We will aver that our husband leased these tenements to the defendant. Judgment whether he ought to have aid as he hath prayed in respect of a lease made to himself.

Migeley. We will aver that these tenements which are claimed were allotted to Margery's share—he was forced into this averment.

Willoughby. Ready etc. that to Laura's share and not to Margery's share.

And so to the country.

V.

Cui in vita, where the tenant, who, according to the writ, held by a lease from the claimant's husband, said that he held by the law of England and prayed aid etc.

In a *cui in vita*—

Migeley. Sir, we have naught in the tenements save a life-term by the curtesy of England of the heritage of such an one, without whom we cannot bring these tenements into judgment; and we pray aid of him.

Willoughby. You entered upon these tenements through our husband, and our writ supposeth as much; and therefore you ought

¹ The text seems corrupt, and the translation given above is necessarily to some extent conjectural.

cest aide fut graunte come vous le demaundez si come a tenant par la ley Dangleterre si serreit le eide en abatement de nostre bref et nous voloms auerer nostre bref.

Mugg. Ceuz tenementz oue autres tenementz si furent en la seisine vn commun auncestre qe ceuz tenementz morust seisi apres qi mort Wauter de Funchwyk¹ et lore sa femme qe ore demaunde et moy et Margerie ma femme en ceuz tenementz entrames come de dreyt nos femmes et ceuz tenoms en comune et demaundoms iugement desicome ieo mostre les tenementz estre du dreyt ma femme et moun estat si tendre qe ieo ne le puis mener en iugement si eide ne deue auoir.

Willeby. Sire nous conissons bien la seisine lour commune² auncestre et lentre des parceners en commune Et vous dioms qentre mesmes les parceners la purpartie se fyt issint qe ceuz acres de terre qore sunt en demande si furent allotez ala purpartye Wauter et Lore come de dreyt Lore le quel Wautier nostre baroun vous lessa les tenementz a qy ele en sa vie contredire ne pout et demandoms iugement si de cel estat deuez aide auer.

Migg. Et nous iugement desicom vous auez conu la seisine le commun auncestre et lentre des parceners en commune et alleggez vne purpartie faite ala quele a trier nous ne pomus estre partie saunz le heir Margerie si eide ne deuoms auer.

Berr. Il vous dit qe ceuz tencementz ly furent assignez en noun³ de purpartye et alienez a vous par son baroun par qei de cel estat qe vous auez par son baroun ne deuez eide auer etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 141d, Yorkshire.

Thomas de Nono Mercato et Lora vxor eius per Willelmum de Hoi-blyng attornatum suum petit uersus Laurencium de Holbeche quatuor aeras terre et medietatem vnus tofti et vnus acre prati cum pertinenciis in Thorne iuxta Hedone vt Ius et hereditatem ipsius Lore Et in quas Idem Laurencius non habet ingressum nisi per Daud de Fletewyk quondam virum ipsius Lore qui illas ei dimisit cui ipsa in vita sua contradicere non potuit etc. Et vnde idem Thomas et Lora dicunt quod eadem Lora fuit seisisa de predictis tenementis in dominico suo vt de feodo et iure tempore pacis

¹ Fritwik, X.

² M omit

³ lieu, X.

not to have aid. And, moreover, if this aid were granted as to a tenant by the law of England, as you ask it, aid so granted would be in abatement of our writ, and we are ready to aver our writ.

Miggeley. These tenements, together with other tenements, were in the seisin of a common ancestor who died seised of these tenements. After his death Walter of Flitwick and Laura, his wife, who now claimeth, and I and Margery, my wife, entered upon these tenements as of the right of our wives, and we hold them in common; and, seeing that I show the tenements to be of the right of my wife and my own estate therein to be so slight that I ought not to bring them into judgment, we ask judgment whether he¹ ought not to have aid.

Willoughby. Sir, we fully admit the seisin of their common ancestor and the entry of the parceners in common; and we tell you that a division was made between the same parceners to the effect that these acres of land which are now claimed were allotted to the share of Walter and Laura as of the right of Laura, and that same Walter our [former] husband, whom Laura could not oppose in his lifetime, leased the tenements to you; and we ask judgment whether in respect of that estate you ought to have aid.

Miggeley. And we ask judgment whether we ought not to have aid, seeing that you have admitted the seisin of the common ancestor and the entry of the parceners in common, and you allege that a division was made, to the trying of which we cannot be a party without Margery's heir.

BEREFORD C.J. He telleth you that these tenements were assigned to Laura as her share and were alienated to you by her husband, and therefore in respect of that estate which you have through her husband you are not entitled to have aid etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 141d, Yorkshire.

Thomas of Newmarket and Laura, his wife, by William of Hoiblyng, his attorney, claimed against Lawrence of Holbeach four acres of land and a moiety of one toft and of one acre of meadow, together with the appurtenances, in Thorne near Hedon as the right and heritage of the same Laura; and into which the same Lawrence hath not entry save by David of Flitwick, aforetime husband of the same Laura, who demised them to him, whom Laura could not oppose in his lifetime etc. And thereof the same Thomas and Laura say that the same Laura was seised of the same tenements in her demesne as of fee and right in time of peace, in the time of the lord King

¹ The scribe has made somewhat of a muddle of his personal pronouns, though the sense is quite clear.

Note from the Record—*continued.*

tempore domini Edwardi Regis patris domini Regis nunc Capiendo inde explecias ad valenciam etc. Et in quas etc. Et inde producunt sectam etc.

Et Laurencius per Walterum de Waynflet attornatum suum venit Et defendit Ius ipsius Lore quando etc. Et dicit quod predicti Thomas et Lora nichil clamare possunt ad presens in predictis tenementis vt de iure ipsius Lore etc. Quia dicit quod tenementa illa simul cum aliis tenementis quondam fuerunt in seisinā cuiusdam Willelmi Gobald qui inde obiit seisitus in dominico suo vt de feodo cui successerunt in eisdem tenementis predicta Lora et quedam Margareta quondam vxor ipsius Laurencii vt sorores et heredes etc. Et inter quas simul cum viris suis hereditas ipsius Willelmi partita fuit Ita quod ista tenementa nunc uersus eum petita contingebant predictam Margaretam vxoris ipsius Laurencii in proparte etc. Et de qua Margareta Idem Laurencius procreauit prolem scilicet quemdam Laurencium filium ipsius Laurencii vnde idem Laurencius de Holebeche dicit quod ipse tenet tenementa illa per legem Anglie de hereditate ipsius Laurencii filii Laurencii Et petit auxilium de ipso Laurencio filio Laurencii etc.

Et Thomas et Lora dicunt quod predictus Laurencius de Holebeche auxilium de predicto Laurencio filio suo habere non debet. Dicit [*sic*] reuera quod predicta tenementa post mortem predicti Willelmi Gobald descenderunt predictis Lore et Margarete vt sororibus et heredibus etc. Et inter quas hereditas illa partita fuit Ita quod tenementa ista contingebant in proparte ipsius Lore vnde eadem Lora fuit seisita vt de hereditate sua quousque predictus Dauid quondam vir etc. cui ipsa etc. illa dimisit predicto Laurencio de Holbeche sicut ipsi per breue suum supponunt. Et hoc petunt quod inquiratur per patriam. Et Laurencius de Holebeche similiter. Ideo preceptum est vicecomiti quod venire faciat hic In Crastino Purificacionis beate Marie xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc.

13. DODESWILL *v.* MUSTEL.¹I.²

Cessauit ou le tenant apres verdist denqueste tendi les arrerages par attorne.

Thomas de Dodeswill porta vn cessauit vers Wauter de solers termino hilarii anno septimo plerent sur vne quiteclame issint qenqueste se ioynit etc. lenqueste dist qe lestat qe Wauter auoit en

¹ Reported by B, E, and X.² Text of (I) from B.

Note from the Record—*continued*.

Edward, father of the lord King that now is, taking esplees therout to the value etc., and into which etc.; and thereof they produce suit etc.

And Lawrence, by Walter of Wainfleet, his attorney, cometh and denieth the right of the same Laura when etc. And he saith that the aforesaid Thomas and Laura can at present claim naught in the aforesaid tenements as of the right of the same Laura etc.; for he saith that those tenements, together with other tenements, were aforesaid in the seisin of one William Gobald, who died seised thereof in his demesne as of fee; and the aforesaid Laura and a certain Margaret aforesaid wife of the same Lawrence succeeded him in the same tenements as sisters and heirs etc.; and the heritage of the said William was divided between them together with their husbands, to the effect that these tenements now claimed against him, Lawrence, were assigned to the aforesaid Margaret, the wife of the same Lawrence, as her share etc. And of that Margaret the same Lawrence begat a child, to wit, a certain Lawrence, the son of this same Lawrence, whereby the same Lawrence of Holbeach saith that he holdeth those tenements by the law of England of the heritage of the said Lawrence, son of Lawrence. And he asketh aid of the same Lawrence, son of Lawrence etc.

And Thomas and Laura say that the aforesaid Lawrence of Holbeach ought not to have aid of the aforesaid Lawrence, his son. They say that in truth the aforesaid tenements descended after the death of the aforesaid William Gobald to the aforesaid Laura and Margaret as sisters and heirs etc.; and that the heritage was so divided between them that these tenements fell to the share of the said Laura, and that she was seised of them as of her inheritance until the aforesaid David, aforesaid husband etc., whom she etc., demised them to the aforesaid Lawrence of Holbeach as they do by their writ allege. And they ask that this may be inquired of by the country. And Lawrence of Holbeach doth the like. So the Sheriff is ordered to make come here on the Morrow of the Purification of Blessed Mary twelve etc. by whom etc., and who are neither etc., to make recognition etc., because both etc.

13. DODESWILL v. MUSTEL.¹

I.

In a writ of *cessavit* the tenant, by his attorney, tendered the arrears after verdict found [and before judgment].

Thomas of Dodeswill brought a *cessavit* against Walter of Solers in the Hilary term of the seventh year. They pleaded against each other as to a quitclaim, so that inquest was joined etc. The inquest said that the estate which Walter had in the tenements he had

¹ See the Introduction, p. xxxvi above. For a similar action against John Mustel see *Year Book Series*, xv, 90.

les tenementz si est de lees W. pierre Thomas et diseint outre qe ceo fait ne feut pas le fait W. pierre Thomas. Sur ceo vint lattorne Wauter auant le iugement rendu sur le verdist etc. et tendi les arrerages.

Russ. Vous estes venu trop tard apres lenqueste passe.

Denum. Statut veot qe si homme veigne auant iugement rendu et tende les arrerages soit rescu et nous sumes venu auant iugement etc. iugement etc.

Serop Iustice. Ieo pos qe le baron et sa femme pledent iointement al enqueste apres lenqueste charge et passe le baroun fet defaute serra la femme receu a defendre seon droit quasi diceret non sic hic.

Russ. Nous auoms dist qil tint de nous ceux tenementz et par homage et fealte etc. et il est issi par attorne et attorne ne put faire homage ne feaute ne trouer serte etc. par qei il ne pust dire qil est prest a faire les arrerages et demandoms iugement etc.

Denum. Vous auez counte qe vous estus seisi dil homage et de la fealte etc. par my nostre mayn etc. ou ley ne veot mye qe homage ne fealte soient faitez entre seignour et tenant forqe vne foithe et nous sumes venu auant iugement etc. et veez icy les arrerages et demandoms iugement.

Berr. Si vous euset tendu les arrerages auant lenqueste passe vous eusssets estre rescu par cas mes vous auez chalenge lenqueste passe et rien ne remenit forqe pronuciacion du iugement par quei vous estes trop venu tarde.

Herle. Il ny ad nul men temps entre lenqueste passe et le iugement.

Denum. Ieo vous pos qe apres lenqueste passe il me eust relese etc. Ieo luy releceray¹ par le fait par qei etc.

Herle dixit quod non.

Denum tendi les arrerages auant.

Berr. Quele surte voilletz vous trouer voilletz trouer surte de C. mars.

Herle. Vous ne poetz surte trouer des arrerages vostre meistre qar vous ne luy poetz obliger par quei nous demandoms iugement et prioms seisine de terre.

Denum. Vous distes mal qar statut ne lymete pas lequel il deit faire par attorne ou en propre persone par quey etc. et demandoms iugement sil etc.

¹ Probably a mistake for *respondray*. See the corresponding passage in version (II).

by the lease of W. the father of Thomas : and it found further that that deed [*sc.* the quitclaim] was not the deed of W. the father of Thomas. Thereupon, before judgment upon the finding was given, Walter's attorney came and tendered the arrears.

Russell. It is too late to come now that the inquest hath passed.

Denham. The statute¹ provideth that if one come before judgment given and tender the arrears he is to be received ; and we have come before judgment etc. Judgment etc.

SCROPE J. I put the case of a husband and wife pleading jointly to the inquest ; then, after the inquest hath been charged and hath passed, the husband maketh default. Will the wife be received to defend her right ?—*intimating that she would not*—So here.

Russell. We have said that the tenant holdeth these tenements of us by homage and fealty etc. ; and he is here by attorney, and an attorney cannot render homage or fealty nor find surety etc. ; and therefore he cannot say that he is ready to pay the arrears, and we ask judgment etc.

Denham. You have counted that you were seised of the homage and of the fealty etc. by our hand etc. ; but the law doth not require that homage or fealty should be rendered to the lord by the tenant more than once ; and we have come before judgment etc., and see here the arrears ; and we ask judgment.

BEREFORD C.J. If you had tendered the arrears before the inquest passed, peradventure you would have been received ; but you challenged the passing of the inquest, and naught remaineth now but to pronounce judgment ; wherefore you have come too late.

Herle. There is no time intervening between the passing of the inquest and the judgment.

Denham. I put to you the case that after the inquest the plaintiff had released to me etc. I could exonerate myself by his deed.² Wherefore etc.

Herle denied this.

Denham tendered the arrears.

BEREFORD C.J. What security will you find ? Will you find security for a hundred marks ?

Herle. You cannot find security for your master's arrears, for you cannot bind him. Therefore we ask judgment and pray seisin of the land.

Denham. You are speaking unadvisedly, for the statute doth not say that he shall do this himself and not by his attorney ; wherefore etc., and we ask judgment whether etc.

¹ Statute of Gloucester, ch. iv.

² See the text and footnote.

II.¹

Cessauit.

Le cessauit fut porte vers vn tenaunt et dist qil tent de luy par certeyns seruices et cessa le tenaunt dist qil auoit relesse touz les services saunela fealte et vn denier et de ceo mist auant le fet le demaundant le quel desdit le fet et troue fut par enqueste qe nent son fet et le tenaunt vint par attorne et rendist les arrerages des seruices et pria qe il poeit trouer seurte etc.

Berr. Il pleda al enqueste et tendist le verdit del enqueste qe passa encountre luy ore entre lenqueste et le iugement nad il nul mene par quey de venir ore de tendre les arrerages vous ne auendrez pas.

Den. Statut voet qe si ieo veigne deuaunt iugement et tende les arrerages etc. seit le tenaunt resceu ore nous sumes venu deuaunt iugement rendu qe mes qil out relesse ore pus lenquest il respoundra al fet.

Scrop. Si bref seit porte vers vn homme et sa femme et il pledent al enqueste et de atende verdit denqueste entendez vous qe si le baroun face defaute qe la femme serra resceu quasi [diceret] noun.

III.²

Cessauit ou apres lenqueste le tenaunt tendist les arrerages etc.

En vn cessauit per biennium qe fut porte vers vn Iohan le demandant dit qe Iohan tient de lui par homage fealte et escuage et les seruices dune livre de comyn et .x. d. de rente et lia seisine par mi sa main Iohan dedit touz les seruices estre la rente de .x. d. et vn livre de Comyn et pur ceus seruices fut il prest a faire les arrerages et les tendist et fut resceu vsr vn relees quant as autres seruices non obstante etc. Et petens dedit le fait et lenqueste vient et troue fut qe ceo ne fut mie le fet launcestre le demandaunt Le iugement fut delaie taunqe lendemain et lendemain furent les parties demande.

Denom pur Iohan Mustel. Vous auez icy Iohan qest venu auant

¹ Text of (II) from *E*.² Text of (III) from *X*.

II.

Cessavit.

The *cessavit* was brought against a tenant, and the plaintiff said that the tenant held of him by certain services and had ceased [to render them]. The tenant said that the plaintiff had released all the services save fealty and one penny; and in witness thereof he proffered the claimant's deed. The claimant denied the deed, and it was found by inquest that it was not his deed; and the tenant came by attorney and tendered the arrears of the services; and the plaintiff prayed that he should find surety etc.

BEREFORD C.J. The defendant pleaded up to the inquest and waited for the verdict of the inquest which passed against him; and now there is no time intervening between the verdict and the judgment, and therefore you will not be allowed to come now to tender the arrears.

Denham. The statute saith that if I come before judgment and tender the arrears etc. the tenant is to be received. We are now come before judgment given, and since the plaintiff hath now, after the inquest, released, he must answer the deed [of release].

Scrope. If a writ be brought against a man and his wife and they plead up to the inquest and abide the verdict of the inquest and if the husband then make default, do you suppose that the wife will be received?—*intimating that she would not be.*

III.

Cessavit, where the tenant tendered the arrears etc. after the inquest.

In a *cessavit per biennium* that was brought against one John the claimant said that John held of him by homage, fealty and scutage and the services of a pound of cummin and ten pence of rent; and he laid seisin by his hand. John denied all the services except the rent of ten pence and a pound of cummin; and he was ready to render the arrears of those services, and he tendered them; and as to the other services he was received to plead a release, notwithstanding etc. And the claimant denied the deed [of release] and the inquest came and it was found that it was not the deed of the claimant's ancestor. Judgment was postponed until the morrow, and on the morrow the parties were called.

Denham for John Mustel.¹ You have John here who hath come

¹ Here we have the defendant's name disclosed. The 'Thomas' of Solers' of the first report seems born of the scribe's imagination.

iugement rendue etc. prest a faire les arrerages et tendi etc. .v. liures de Comyn etc. des arrerages et vous dit quen dreit del homage fealte et escuage mesme est seisi.

Scrop. Vous attendistez lenqueste qe passa encountre vous et point ne tendistes etc. auant lenqueste pris etc. et entre le verdit et le iugement ny ad il nul meen temps par qei vous nestes mie venuz par temps etc.

Berr. Vous dedeistes les seruices estre la rente et la liure de Comyn et par vn fet qest trone faus par enqueste vodriez vous estre resceu a defere ceo qe vous auez auant dit par vn faus fet quasi diceret non.

Denom. Il ad estatut qe nous limite en nostre respouns qil en responce qe nous venoms auant iugement rendu sauer atendre les arrerages et les damages etc. vt supra et nous sumes venuz auant iugement rendu par qei a vous a veer si nous deuoms estre resceu.

Berr. Quele seurte vodriez vous trouer trouez seurte de C. liures.

Denom. Tiele seurte qe vous agardez nous tendroms volunters et nentendoms mie qe vous ne trouerez mesqe sufficiiaunt seurte etc.

14. KIRKMAN v. LELLY.¹

Replegiare ou lauowerie feust faite en Real chemyn pur seruices.

Hugh de Kircham se plaint qe Iuliane qe feut la femme Rauf lille atort prist ses auers scilicet ij. chiuals en Stokeburgh.

Burtone. Iuliane auowe la prise par la resone qe mesme cestuy Hugh tint de Rauf dil lille iadys son baron vn mees vne carue de terre etc. par homage fealte et par les seruices de xvj. deners par an etc. des queux seruices seon baron feust seisi par my la mayn Hugh come par my la main etc. et morust seisi apres qi mort Robert seon fitz entra come fitz et heir et assigna les seruices cesti Hugh a Iuliane en seon dower et pur les vijd. ob. de terme de Pentecost lan syme arreres si auowe ele en dreit dil vn chival en mesme le lieu ou il se plaint pur ceo qe mesme cesti Hugh feut maynoueratus en Northale qest parcele

¹ Reported by B. Names of the parties from the Plea Roll.

before judgment given etc. ready to render the arrears—and he tendered etc. five pounds of cummin etc. for the arrears—and he telleth you that in respect of homage, fealty and scutage the claimant is seised.

Scrope. You waited for the inquest, and it passed against you, and you did not tender etc. before the inquest was taken etc., and between the verdict and the judgment there is no interval, and so you are not come in time etc.

BEREFORD C.J. You denied the services, saving the rent and the pound of cumin ; and do you want, on the strength of a deed which hath been found by the inquest to be false, to be received to deny by a false deed what you have said before?—*intimating that he could not be received.*

Denham. There is a statute which provideth a time within which we may make what answer we answer, namely that we may come before judgment given to tender the arrears and the damages etc. *ut supra* ; and we are come before judgment given, and therefore it is for you to consider whether we are not entitled to be received.

BEREFORD C.J. What surety will you find ? Find surety for a hundred pounds.

Denham. We will willingly find such surety as you award, and we do not think that you will order security for a larger amount than is necessary.

14. KIRKMAN v. LELLY.

In a writ of replevin the avowant avowed a seizure on the King's highway for rent service in arrear.

Hugh the Kirkman¹ complaineth that Gillian that was wife of Ralph Lille wrongfully took his cattle, to wit, two horses ; in Stockbridge.

Burton. Gillian avoweth the taking on the ground that this same Hugh held of Ralph of Lelly that was aforetime her husband one messuage, and one carucate of land etc. by homage, fealty and by the services of sixteen pence a year etc., of the which services her husband was seised by the hand of Hugh as by the hand etc. ; and he died seised. After his death Robert, his son, entered as son and heir and assigned the services of this Hugh to Gillian as part of her dower ; and for seven pence and a halfpenny² in arrear for the term of Pentecost in the seventh year [of the reign of the lord King that now is] she avoweth in respect of one horse in the place whereof Hugh complaineth, for this same Hugh was working the land in Northale which is parcel etc. and

¹ Corrected from the Plea Roll.

² Sevenpence halfpenny is not half of sixteen pence. But both these sums

are incorrect. See the following Note from the Record.

etc. et apurtenaunt qele luy voleit auer destraint se myst a la fuste et issint en defuaunt ele les prist come bien luy leust en dreit dilantre chiual pur homage etc.

Prilli. Iugement de ceste auowerie desicom vous destreintes pur rente service etc. et anetz conu la destresce hors de vostre fee ou ne list a nuli destresce faire hors de seon fee sil ne soit pur damage fesaunt demandoms iugement.

Berr. Distes outre.

Prilly. Northale est hors de seon fee prest etc.

Et alii econtra et sic ad patriam.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 280, Yorkshire.

Iuliana que fuit vxor Radulphi de Lelle et Nicholaus filius eiusdem Iuliane in misericordia pro pluribus defaultis etc.

Idem Iuliana et Nicholaus summoniti fuerunt ad respondendum Iuoni le Kirkeman de Rolstone in Holdernesse de placito quare ceperunt aueria ipsius Iuonis Et ea iniuste detinuerunt contra vadium et plegios etc. Et vade Idem Iuo per Robertum de Midliltone attornatum suum queritur quod predicti Iuliana et Nicholaus die Mercurii proxima ante festum sancte Trinitatis anno regni domini Regis nunc sexto in villa de Rolestone in quodam loco qui vocatur Stokbrigg duos equos ipsius Iuonis [ceperunt] Et eos iniuste detinuerunt contra vadium et plegios quousque etc. vnde dicit quod deterioratus est Et dampnum habet ad valenciam Centum solidorum Et inde producit sectam etc.

Et Iuliana et Nicholaus per Robertum de Wythomwyk attornatum suum veniunt Et eadem Iuliana respondet pro se et pro predicto Nicholao Et bene aduocat predictam capcionem et iuste etc. Quia dicit quod predictus Iuo tenuit de predicto Radulpho quondam viro ipsius Iuliane vnam bouatam terre cum pertinencijs in Rollestone per fidelitatem et seruicium decem et septem denariorum per annum soluendam medietatem ad festum Pentecoste Et aliam medietatem ad festum sancti Martini in Hieme De quibus fidelitate et seruicio Idem Radulphus fuit seisisus per manus predicti Iuonis etc. Et qui quidem Radulphus obiit seisisus de predictis seruicijs prouenientibus de predictis tenementis in dominio suo vt de feodo etc. post cuius mortem quidam Robertus filius et heres predicti Radulphi assignauit predicta seruicia ipsi Iuliane tenenda nomine dotis etc. Et quia octo denarii et vnus obolus de predictis seruicijs de termino Pentecoste anno regni domini Regis nunc sexto ipsi Iuliane aretro fuerunt die capcionis etc. cepit ipsa vnum de predictis equis et pro fidelitate ipsius Iuonis cepit ipsa alium equum in predicto loco de Stokbrigg eo quod ipsa predictis die et anno vilit ipsum Iuonem manuoperantem cum predictis auerijs in quodam

appurtenant ; and when she was about to levy distress he took to flight, and so it came about that she seized the horses while he was in flight [with them], as she was well entitled to do. And in respect of the other horse [she avoweth] for homage etc.

Prilly. We ask judgment of this avowry, seeing that you distrained for rent service etc. and have admitted levying distress outside your fee, and none may levy any distress outside his own fee save only for *damage fesant*. We ask judgment.

BEREFORD C.J. Say over.

Prilly. Northale is outside her fee ; ready etc.

And the other side joined issue ; and so to the country.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 280, Yorkshire.

Gillian that was wife of Ralph of Lelly and Nicholas, son of the same Gillian, in mercy for several defaults etc.

The same Gillian and Nicholas were summoned to answer Ives the Kirkman of Rowlston in Holderness of a plea why they took the beasts of the same Ives and unjustly detained them against gage and pledges etc. And thereof the same Ives by Robert of Middleton, his attorney, complaineth that the aforesaid Gillian and Nicholas on the Wednesday next before the Feast of the Holy Trinity in the sixth year of the reign of the lord King that now is in the vill of Rowlston in a certain place which is called Stockbridge took two horses, the property of the same Ives, and did unjustly detain them against gage and pledges until etc. : whereby he saith that he hath suffered loss and hath damage to the amount of a hundred shillings. And thereof he produceth suit etc.

And Gillian and Nicholas come by Robert of Withamwick, their attorney. And the same Gillian answereth for herself and for the aforesaid Nicholas. And she doth well avow the aforesaid taking and justly etc. For she saith that the aforesaid Ives held of the aforesaid Ralph that was aforesaid husband of the same Gillian one bovat of land with the appurtenances in Rowlston by fealty and the service of seventeen pence a year, one moiety of which was to be paid at the feast of Pentecost and the other moiety at the Feast of St. Martin in the Winter, of which fealty and service the same Ralph was seised by the hands of the aforesaid Ives etc., and the said Ralph died seised in his demesne as of fee etc. of the aforesaid services issuing out of the aforesaid tenements : and after his death a certain Robert, son and heir of the aforesaid Ralph, assigned the aforesaid services to this same Gillian to hold in the name of dower etc. And because eight pence and one halfpenny of the aforesaid services for the term of Pentecost in the sixth year of the reign of the lord King that now is were in arrear to the same Gillian on the day of the taking etc., she took one of the aforesaid horses, and she took the other horse for the fealty of the said Ives, in the aforesaid place of Stockbridge, because on the aforesaid day and year she saw the same Ives working with the aforesaid

Note from the Record—continued.

loco qui vocatur Nordayl qui est parcella predictae bonate terre Et cum Idem Iuo perpenderit quod ipsa Iuliana ipsum distringere voluit in predicto loco Idem Iuo inde fugiebat cum auriis predictis vsque in predictum locum de Stokbrigg per quod eadem Iuliana ipsum inde persequeretur vsque in locum illum et ipsum ibidem distrinxit sicut ei bene licuit etc.

Et Iuo dicit quod predicta Iuliana predictam capcionem iustam aduocare non potest ratione predicti loci de Nordayl Quia dicit quod locus ille est extra feodum quod quondam fuit predicti Radulphi quondam viri etc. Et hoc paratus est verificare etc.

Et Iuliana dicit quod ipsa verificacionem illam expectare non potest sine predicto Roberto filio et herede predicti Radulphi quondam viri etc. Ideo ipse summonetur quod sit hic a die Pasche in tres septimanas ad respondendum simul etc. Ad quem diem veniunt tam predictus Iuo quam predicta Iuliana per attornatos suos Et predictus Robertus filius Radulphi summonitus ad respondendum simul etc. non venit Ideo predicta Iuliana respondeat sola etc. Et eadem Iuliana aduocat vt prius etc.

Et Iuo dicit quod predicta Iuliana iniuste aduocat in defugiendo etc. Dicit enim quod predictus locus de Northdayl in quo predicta Iuliana dicit se inuenisse prefatum Iuonem manoperantem etc. est extra feodum ipsius Iuliane sicut Idem Iuo superius dixit Et hoc petit quod inquiratur per patriam Et Iuliana similiter Ideo preceptum est vicecomiti quod venire faciat hic a die Sancti Michaelis in xv. dies xij. etc. per quos etc. Et qui nec etc. Quia tam etc.

15. WALEYS r. ROSS.¹I.²

Dowayre porte vers vn gardein qe dit qele ne deneit dowaire auer taunqe ele eust rendu le heir son baroun etc. laquele countrepleda le dreit le gardein et dit qe il ne denoit etc. pur ceo qe il nauoit pas dreit en la garde etc.

Margerie qe feust la femme Wauter de Wales³ porta bref de Dowere uers W. de Ros gardein des terres et del heir Wauter de Wales.

Denum. Bien est verite qe nous sumes gardein etc.⁴ et a nous apent la garde du corps par la reson des tenementz qe le piere lenfaunt teint de nous et vous dioms qe ele happa le heir apres la mort son baroun

¹ Reported by *B, C, E, H,* and *M.* Names of the parties from the Plea Roll.

² Text of (I) from *B* collated with *M.* The headnote in *M* is: Dowere ou la femme fut seisi del corps del heyr etc. et si voleit rendre le heyr fut [prest] a rendre dowere etc. ³ Waleys, *M.* ⁴ For etc. *M* has des terres et dil heyr.

Note from the Record—*continued*.

beasts in a certain place which is called Nordayl, which is parcel of the aforesaid bovaté of land, and when the same Ives bethought him that she, Gillian, meant to distrain him in the aforesaid place, the same Ives ran away, taking with him the aforesaid beasts, right into the aforesaid place of Stockbridge; wherefore the same Gillian followed after him thence into that place and there distrained him, as she was well entitled etc.

And Ives saith that the aforesaid Gillian cannot avow the aforesaid taking as a just one because of the aforesaid place of Nordayl, for he saith that that place is without the fee which was aforetime the fee of the aforesaid Ralph that was aforetime husband etc. And this he is ready to aver etc.

And Gillian saith that she cannot abide that averment without the aforesaid Robert, son and heir of the aforesaid Ralph, aforetime husband etc. So he is to be summoned to be here three weeks after Easter to answer together with etc. On which day both the aforesaid Ives and the aforesaid Gillian come by their attorneys. And the aforesaid Robert, son of Ralph, summoned to answer together with etc. doth not come. So the aforesaid Gillian is to answer alone etc. And the same Gillian avoweth as before etc.

And Ives saith that the aforesaid Gillian doth unjustly avow by reason of his running away, for he saith that the aforesaid place of Nordayl¹ in which the aforesaid Gillian saith that she found the aforesaid Ives working etc. is without the fee of the same Gillian as the same Ives hath said above, and he asketh that this may be inquired of by the country. And Gillian doth the like. So the Sheriff is ordered to make come here on the quindene of St. Michael twelve etc. by whom etc., and who are neither etc., because both etc.

15. WALEYS v. ROSS.²

I.

A writ of dower was brought against a guardian who said that the plaintiff ought not to have dower until she had surrendered the heir of her husband. The plaintiff counterpleaded the guardian's right and said that he was not entitled to have the custody of the heir's body, as he had no right to the wardship etc.

Margery that was wife of Walter of Wales brought a writ of dower against William of Ross, guardian of the lands and of the heir of Walter of Wales.

Denham. It is true that we are guardian etc., and the wardship of the [heir's] body belongeth to us by reason of the tenements which the infant's father held of us; and we tell you that the plaintiff seized the

¹ The actual seizure was made, according to both sides, in Stockbridge and not in Nordayl. Is Ives contending that the seizure was constructively

made in Nordayl, outside Gillian's fee?

² See the Introduction, p. xxxvii above.

et quelle heure qele nous rende le corps le heir nous luy rendrons seon Dowere.

Migg. Par resoun de queux tenementz apent la garde dil corps¹ a vous.

Denum. Nest auxi mester a dire cella a vous qe vous ne poietz my estre partie a countrepleder etc.

Berr. Respoundetz a ceo ou² rendetz dowere a la Femme.

Denum. Donques³ nous dioms qe le pierre lenfaunt teint de nous vn mees et xvj. boues de terre en C. par resoun des queux tenementz etc.

Migg. Par resoun de ceux tenementz ne poetz etc. qar nous vous dioms qe le pierre lenfaunt teint ceux tenementz dun Robert et Margerie⁴ sa femme⁵ com de dreit Margerie.

Scrop. Ore sumes nous a vos auisements si ele purra encountre nous cel respounse vser puis qele porta seon bref vers nous come vers gardein de mesme les tenementz si ele qe ne cleime rien en la garde se puisse ouster⁶ qele ne deit rendre lenfaunt a nous par vn auerement qe chiet a trier autri dreit ingement.

Berr. Tut porte ele seon bref vers vous come vers gardein pur ceo nonsuwit pas qe vous ocupes la garde a dreit qar il couient qele porte seon bref vers celui qest gardein soit il ad dreit soit il a tort et serreit il dire⁷ pur ceo qe ele ne veot mie rendre lenfaunt a vous qe ne denietz la mariage auer qele serreit par taunt de son dowere barre quasi diceret non etc.

Scrop. Dil heure qe nous tendoms dauerer qe launcestre etc. tint ne nous etc. et nous seisi de ses seruces⁸ etc. et ele ne puist⁹ dire qe autre seigneur porte bref vers luy¹⁰ ne qe¹¹ debat y soit par autre seigneur ne ele ne cleime garde par resoun de noriture nentendoms my qele¹² puisse autri dreit pleder¹³ etc.

Denum ad idem. Si lauerement se ioynsit entre nous ore et passat pur nous lenfaunt nous serreit liere come a celui a qi le mariage appent et si en temps apres autre seigneur portast bref vers nous cele enqueste ne nous eidreit pas einz couendreit ioindre lauerement del nouel ou pays passereit paraenture en contre nous issi par agarde de Court nous serroit il adrein¹⁴ tolet ceo qe auoms ore gaine par agarde de mesme la court et issi vn ingement defreit vn autre par quay nentendoms

¹ heyr, *M.*

² From *M*; *B has et.*

³ Added from *M.*

⁴⁻⁵ Added from *M.*

⁶ esturte, *M.*

⁷ respoundre, *M.*

⁸ tenementz, *M.*

⁹ poet, *M.*

¹⁰⁻¹¹ mesqe, *M.*

¹²⁻¹³ se puisse couerir par autre dreyt a pleder, *M.*

¹⁴ a demeyn, *M.*

heir after her husband's death ; and when she doth deliver the body of the heir to us we will give her her dower.

Miggeley. By reason of what tenements doth the wardship of the [heir's] body belong to you ?

Denham. We have no need to tell you that, for you cannot be a party to counterpleading etc.

BEREFORD C.J. Reply to that, or give the woman dower.

Denham. Then we tell you that the father of the infant held of us a messuage and sixteen bovates of land in C., by reason of which tenements etc.

Miggeley. By reason of those tenements you cannot etc., for we tell you that the infant's father held those tenements of one Robert and Margery his wife, as of the right of Margery.

Scrope. Now we ask your [*sc.* the Court's] ruling whether the plaintiff can use such answer against us, seeing that she brought her writ against us as against the guardian of these same tenements, [and] whether one that claimeth naught in the wardship can exonerate herself from the obligation to deliver the infant to us by an averment which amounteth to the trial of some other person's right. Judgment.

BEREFORD C.J. Though she bringeth her writ against you as against the guardian, it followeth not therefrom that you are rightfully seised of the wardship ; for she must needs bring her writ against him that is guardian [in fact], whether he be such rightfully or wrongfully. And can you say that because she will not surrender the infant to you, on the ground that you are not entitled to have the marriage,¹ she ought for that reason to be barred from her dower ?—*intimating that she ought not to be barred for such a reason.*

Scrope. Since we offer to aver that the ancestor etc. held of us etc., and that we were seised of his services etc., and since the plaintiff cannot say that any other lord is bringing a writ against her or that there is any controversy with any other lord, and she is not claiming wardship by reason of nurture, we do not think that she can plead the right of another etc.

Denham ad idem. If averment were now to be joined between us and should pass in our favour, the infant would be delivered to us as to those to whom his marriage belongeth ; and if, in time to come, some other lord should bring a writ against us, this inquest would not help us ; but we should have to join an averment afresh, when peradventure the jury might find against us, and so, finally, we should be deprived, by the judgment of the Court, of what we should now gain by judgment of the same Court ; and so one judgment would upset another. Therefore,

¹ *i.e.* the profits of the heir's marriage.

pas qe mesqe¹ nous vodrons prendre lauerement qele tende qe la Court ²nous vodreit resceine.³

Berr. Tendetz et assaiez qe la Court ne deit my chascier la femme de rendre le heir⁴ a vous par vostre simple dit en coudre lauerement qele tiende.

Et furunt audrein chacietz a respoudre al auerement. Et stetit verificacio prout superius tendit etc.

II.⁵

Dower.

Vne femme porta soun bref de Dower vers vn Gardeyn dez terres vn heir .R. fiz etc.

Scrop. Rendez nous le heir et nous vous rendrons [*sic*] vostre dower.

Mug. Par ceu respouns ne poez nostre dower delayer si vous ne diez coment la garde a vous appent.

Scrop. Ne couent naye qe vous nous auez nome gardein par vostre bref dez terres le heir ou de comune dreyt la garde de cors appent a la garde de terre et vous ne poez affermer dreyt en vostre persone par resoun de nuture ou en autre maner par title de dreyt nous demandoms iugement si a vous qe auez hape la garde de vostre tort demene auoms mestre a moustre coment la garde a nous appent.

Berr. Si vous auez resoun a la garde del cors qei vous greue a dire coment.

Scrop. Le pere le enfant tent de nous par seruices de chivalier et morust en nostre homage et issy appent a nous etc.

Mug. Qe il tent ceu tenementz de vn Ion et Margerie sa femme com del dreyt Margerie prest etc.

Scrop. Cest auerement chet a trier le dreyt de la garde ou vous qe riens nabez en la garde a trier autri dreyt ne serrez receu.

Mug. Par ceu respouns ne byoms my a trier la garde mes anenter la resoun par qei vous nous volez barrer de nostre dower.

Scrop. La tenaunce est cause dez seruices de chivalier qe douent garde et mariage et par bref et par counte vous nous supposez estre gardeyn dez terres le heir et issy vous nous supposez estre gardeyn par resoun de la tenaunce tenu de nous en chivalrie par qei de auer le reuers de ceo qe vous auez auant couue ne deuez este resceu.

¹ mesmes, *M.*

²⁻³ ne nous rescouert par bref, *M.*

⁴ bref, *M.*

⁵ Text of (II) from *C.*

even though we were willing to accept the averment which the plaintiff offereth, we do not think that the Court would receive us thereto.

BEREFORD C.J. Offer it and see whether the Court [is of opinion that it] ought to compel the woman to surrender the heir on your mere statement against the averment which she offereth.

And in the end the defendant was made to answer Margery's averment. And the averment stood as she offered it, as above.

II.

Dower.

A woman brought her writ of dower against the guardian of the lands of an heir. R., son etc.

Scrope. Give up the heir to us, and we will give you your dower.

Miggeley. You cannot withhold our dower by any such answer unless you say how the wardship belongeth to you.

Scrope. We need not do that, for you, in your writ, have called us the guardian of the heir's lands, and, by common right, the wardship of the body goeth with the wardship of the land ; and you can not assert any right in your own person by reason of nurture or any other reason of right. We ask judgment whether to you who have, of your own wrongful action, seized the wardship we need show how the wardship belongeth to us.

BEREFORD C.J. If you have any right to the wardship of the body, how shall it harm you to say what it is ?

Scrope. The infant's father held of us by knight's service, and he died in our homage ; and thus it belongeth to us etc.

Miggeley. Ready etc. that he held these tenements of one John and Margery, his wife, as of the right of Margery.

Scrope. This averment involveth the trial of the right to the wardship ; but you who have naught in the wardship will not be received to try the right of another.

Miggeley. Our purpose in offering such an averment is not to try the right to the wardship, but to defeat the argument by which you want to bar us from our dower.

Scrope. The tenancy is that which giveth rise to the knight's service which entaileth the right to wardship and marriage ; and you, by your writ and by your count, do suppose that we are guardian of the heir's lands, and so suppose us to be guardian by reason of the tenement held of us by knight's service. Consequently you ought not to be received to aver the opposite of that which you have previously admitted.

Berr. Si vous estez entre vn tenement a tort apres la mort son baroun cum gardeyn la femme qe demande soun dower ne vous put autrement nomer mes par tant ne proue mye la femme qe lez tenementz fuerunt tenuz de vous par chivalrie.

Heruy. En bref de rauissement de garde ceo nest pas respouns pur le defendaunt a dire qe le pere lenfant pleyntif tent de ly sanz ceo qil moustre qe la garde a ly appent de dreyt auxi de ceste parte vous ne poez nent soun tittle countrepleder en affirmaunt par auerement cele garde en autre persone si vous naffirmez cel garde par tittle de dreyt.

Mug. Sil portast bref de garde vers moy ieo serray receu a tel respouns sanz tittle moustre auxi de ceste parte.

Denom. Nous ly surmettons vn tort ou il en couerand ly de autri dreyt ne ly put de ceo excuser.

Pass. Si cest auerement fut resceu et lenqueste passast pur nous recoueroms la garde del cors com de nostre dreyt ou si ceux en qi persone il afferment le dreyt portassent lour bref de dreyt et descendissent en enqueste et lenqueste passast entre nous et issy par cas .ij. enquestes passereient sur vn dreyt dount la vne serreit contrariant al autre qe serreit inconuenient de ley.

Berr. Nest pas inconuenient de ley qe diuerses plees terminent diuersement entre diuerses persones dount si vous volez lauerement pernez le et si noun rendez la femme soun dower.

Par qei lauerement fut resceu.

III.¹

Dower.

Vn femme porta bref de dower vers William de Ros gardeyn de la terre vn G. baroun la femme.

Denum. Ele nous detent le heir par qey rendez le corps del enfant et prest sumes de la rendre dower.

Migg. Le pere lenfant ne tent pas ceux tenementz de vous des quex la femme demande dower par seruices qe dount garde eynz de vn tel qe ad soun bref pendaunt de mesme la garde iugement si par tant nous poetz barrer.

Denum. A dire qil tent de altre qe de nous ceo serreit a pleder altri dreyt qe ne gist pas en vostre bouche.

¹ Text of (III) from *E.*

BEREFORD C.J. If you have wrongfully entered a tenement as guardian upon the death of the plaintiff's husband, she cannot, in claiming her dower, call you aught else ; but she doth not thereby prove that the tenements were holden of you by knight's service.

STANTON J. In a writ of ravishment of ward it is no answer for the defendant to say that the father of the infant in respect of whom the complaint is made held of him, unless he show that the wardship rightfully belongeth to him. So here you cannot counterplead his title by an averment asserting that this wardship is in some other person unless you say that such other hath it by a rightful title.

Miggeley. If he were to bring a writ of wardship against me I should be received to make such an answer without showing by what title. So here.

Denham. We charge her with a wrongful act of which she cannot exonerate herself by the pretext of somebody else's right.

Passeley. If this averment were received and the inquest passed in our favour, we should recover the wardship of the body as of our right ; and if those in whose person they affirm the right to be brought their writ of right [against us] and went to an inquest, and the inquest passed between us, then, peradventure, it might so happen that two inquests would pass upon a single right, one of which might be opposed to the other, which would be incompatible with law.

BEREFORD C.J. Not incompatible with law, for different pleas between different parties have different results. If, then, you are willing to accept the averment, take it ; and, if not, give the woman her dower.

The averment was therefore received.

III.

Dower.

A woman brought a writ of dower against William of Ross, guardian of the land of one G., the woman's husband.

Denham. She detaineth the heir from us. Give us, then, the person of the infant and we are ready to give her dower.

Miggeley. The infant's father did not hold those tenements of which the woman is claiming dower of you by services which give wardship, but of such an other one, whose writ in respect of the same wardship is now pending. Judgment whether you can bar us by what you say.

Denham. To say that she holdeth of some other than us would be to plead the right of another ; and it doth not lie in your mouth to do that.

Berr. Ele est seisi del corps etc. et vous sauetz qe vous nauetz pas dreyt et ceo voet ele auerer veetz si la Court le rescueura si vous le voletz.

Denum. Ele nous nome gardeyn en son bref et par tant suppose ele qe le pere lenfant tint de nous.

Berr. Depus qe vous estes seisi de la terre come en noun de garde le quel il seit a dreit ou a tort si ele deit estre respoundu a son bref de dower il couent nomer la gardeyne.

Malm. Si vous veetz qe la feme en ceo cas purra estre partie de trier altri dreyt etc. nous voloms lauerer volenters qe Launcestre lenfant ne tint pas de celuy a qy ele suppose la garde apendre prest etc.

Et alii eontra. Et fu dit en ceo plee qe mes qe Launcestre Lenfant ne tint pas les tenementz demandez de celuy qe fu nome gardeyn mes fist altres tenementz et il les auoit seisi le respouns serra meyn tenue vers la femme qe demande dower qele ne deuereit estre respoundu si ele ne rendisist le corps depus qele auoit le corps le heir happe.

IV.¹

Alice qe fut la feme W. de W. porta son bref de dower uers W. de N. et demaunda la tierce partie de iij. mies et deux caruez de terre en M.

Denom. Sire nous vous dioms qe W. baron meyme ceste Alice tynt de nous les auantditz tenementz par homage et par les seruices de chiualrie et pur le nounage R. nous entrames ceux tenementz par reson de garde et ceste Alice nous deforce la garde du cors par qai si ele nous voet rendre lenfaunt nous la tendroms dower.

Scrop. La ou il dit qe la garde apent a luy nous vous dioms qe la garde apent a vn autre et noun pas a luy et demaundoms iugement la ou la garde a luy ne apent si par de force des chose [*sic*] qe a luy ne apent pouit [*sic*] de dower nous puyz barrer.

Denom. Et nous demaundoms iugement del hure qe vous ne poez moustrer vostre deforce dreiturel mes le tort qe nous vous surmettoms couerez par autri dreyt quel tort vous rebotera de accion de dower si nostre tort ne poez escuser moustraunt qe vous eez dreyt en celle dreyt qar de autri dreit nostre tort ne poez si noun de uostre dreit demeyn estre couert.

¹ Text of (IV) from II.

BEREFORD C.J. She is seised of the body etc., and you know that you have no right to have it : and she wisheth to aver that. See if the Court will receive the averment, if you be willing to accept it.

Denham. She nameth us guardian in her writ, and thereby she doth suppose that the infant's father held of us.

BEREFORD C.J. Since you are seised of the land, be it rightly or wrongly, on the allegation of wardship, she must, if she is to get any answer to her writ of dower, name you as guardian.

Malberthorpe. If you be of opinion that the wife can, in these circumstances, be a party to trying the right of another etc., we are ready to aver that the infant's ancestor did not hold of him to whom she allegeth that the wardship belongeth ; ready etc.

And thereon issue was joined. And it was said in this plea that even though the infant's ancestor did not hold the tenements [in respect of which dower was] claimed of him that was named guardian, but held other tenements which [the guardian] had seized, it would still be a good answer to the woman claiming dower that she was not entitled to be heard, unless she surrendered the body of the heir, because she had snapped the heir's body.

IV.

Alice that was wife of W. of W. brought her writ of dower against W. of N. and claimed the third part of three messuages and of two carucates of land in M.

Denham. Sir, we tell you that W., husband of this same Alice, held the aforesaid tenements of us by homage and knight's service, and we entered these tenements as guardian because of the nonage of R., and this Alice deforceth us of the wardship of the body. If, then, she be willing to surrender the infant to us, we will tender her her dower.

Scrope. Whereas he saith that the wardship belongeth to him, we tell you that the wardship belongeth to another and not to him : and, since the wardship belongeth not to him, we ask judgment whether he can bar us of our dower by reason of what doth not belong to him.

Denham. And, since you cannot show that your deforcement is lawful, or, by the allegation of somebody else's right, excuse yourself of the tort with which we charge you, a tort which barreth you from any right of action, unless you can exonerate yourself of such tort by showing that you have a right to this right [of wardship], and you cannot excuse yourself of your tort by alleging the right of someone else, but only by proving your own right, we ask judgment.

Herel. Il ne purra iames faire tort si noun a cely qe ad dreyt mes il vous tende de auerer qe vn autre ad dreit et si ceo poet auerer luy suffit pur la barrer de sa accioun remuer et pur son reconerer.

Migg. Cesti a qy nous dioms qe le dreit de ceste garde est ad bref pendaunt de meyme celle garde countre la feme par qai il moi semble qe tiel excepcioun ne moy dait de dower barrer.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 122, Leicestershire.

Elizabetha que fuit vxor Roberti le Waleys per attornatum suum petit uersus Willelmum de Ros custodem terre heredis Roberti le Waleys terciam partem sex messuagiorum et sex virgatarum terre cum pertinenciis in Thorpe iuxta Barkeby vt dotem etc. Et Willelmus per Simonem de Cranesle attornatum suum venit et dicit quod post mortem predicti Roberti le Waleys patris predicti heredis qui de ipso Willelmo de Ros tenuit predicta tenementa vnde ipsa Elizabetha modo petit dotem etc. per seruicium militare per quod custodia et maritagium eiusdem heredis ad ipsum Willelmum pertinet seisiuit eadem Elizabetha predictum heredem et eum eidem Willelmo iniuste detinet et deforciat vnde dicit quod ipse paratus est reddere ei dotem si ipsa velit reddere predictum heredem etc.

Et Elizabetha dicit quod predictus Willelmus iniuste se excusat in hac parte per custodiam predicti heredis quia dicit reuera quod predictus Robertus pater predicti heredis non tenuit predicta tenementa de prefato Willelmo per seruicium militare sicut predictus Willelmus dicit Et hoc petit quod inquiratur per patriam Et Willelmus similiter Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Martini in xv. dies prece parcium xij. etc. per quos etc. Et qui nec etc. Quia tam etc. Ad quem diem veniunt partes per attornatos suos Et vicecomes non misit breue etc. Ideo sicut prius preceptum est vicecomiti quod venire faciat hic in octabis Purificacionis beate Marie xij. etc. per quos etc. Quia tam etc.

16. ANON.¹

Priere eyde qe fust countreplede pur ceo qe celuy de qi etc. feut en le remayndre et hoc non obstante habuit auxilium.

En vn bref dentre porte vers vn Iohan

Migg. Il vous dit qil nad rienz en ceux tenementz mesqe terme de vie et la reuersion a B.

¹ Reported by B, M, and X. Text from B collated with the others. The head-note in X is: De ingressu ou tenaunt a terme de vie pria eide de celi a qi remeindre fut taille par fyn.

Herle. She can never be guilty of a tort against one who hath no right, and she offereth to aver that another hath the right; and, if she can aver that, that is sufficient to defeat the bar to her action and to entitle her to recover.

Miggeley. He in whom we say that the right to this wardship reposeth hath a writ pending against the woman in respect of this same wardship; and therefore it seemeth to me that the exception taken ought not to bar her from her dower.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 122, Leicestershire.

Elizabeth that was wife of Robert the Waleys by her attorney claimeth against William of Ross, guardian of the land of the heir of Robert the Waleys, the third part of six messuages and of six virgates of land, with the apputenances, in Thorpe near Barkby, as dower etc. And William, by Simon of Cransley, his attorney, doth come, and he saith that after the death of the aforesaid Robert the Waleys, father of the aforesaid heir, who held of him, William of Ross, the aforesaid tenements of which this same Elizabeth now claimeth dower etc. by knight's service, the wardship and marriage of the same belonging therefore to him, William, this same Elizabeth did seize the aforesaid heir and doth unjustly detain and deforce him from the same William; and, touching this, he saith that he is ready to render Elizabeth her dower if she will surrender the aforesaid heir etc.

And Elizabeth saith that the aforesaid William doth in this matter unjustly excuse himself on the ground of the wardship of the aforesaid heir, for she saith that in truth the aforesaid Robert, father of the aforesaid heir, did not hold the aforesaid tenements of the aforesaid William by knight's service, as the aforesaid William doth say. And she asketh that this may be inquired of by the country. And William doth the like. Therefore the Sheriff was ordered to make come here on the quindene of St. Martin, *prece parcium*, twelve etc., through whom etc.; and who are neither etc., because both etc. Upon which day the parties come by their attorneys. And the Sheriff did not send the writ etc. Therefore as before the Sheriff was ordered to make come here in the octaves of the Purification of Blessed Mary twelve etc., through whom etc., because both etc.

16. ANON.

An aid prayer was counterpleaded because he whose aid was prayed had only an estate in remainder; but nevertheless aid was granted.

In a writ of entry brought against one John—

Miggeley. The defendant telleth you that he hath naught in these tenements save a life-term, and the reversion is to B.

Et pria eyde de luy et mist auant fyn qe testmoigna qe les tenementz furent renduz a mesme celuy Iohan a auer etc. a tote sa vie et apres seon deces qe les tenementz remeindrent a B. a auer etc. a luy et a les heirs de son corps etc. et apres seon deces qe les tenementz remeindrent¹ a etc. et a les heirs de seon corps issauntz ²et apres seon deces a B. et a les heirs de son corps issauntz et apres seon deces a B. et a les heirs de son corps etc.³ et issint prie⁴ ele⁵ [*sic*] ayde par la forme de la fyn.

Stonore. Aide ne deiuet auer qar si vous ⁶dussetz eide auer⁷ ceo serroit a supposer qil purreit pleder plus haut qe vous et ceo ne purreit il pas qe par la fyn auxi graunt auantage est done a vous come a luy Item la fyne doune qe vous poetz⁸ vouchier sauntz luy par quei vous nauetz mye mester de eide Item si eide vous seit graunte de B. par mesme la reson qe vous auetz de ly⁹ eide par mesme la respounse [*sic*] si auera il eide de C. et issi chescun a qi remaingre est taille auerit eide dautres.

Berr. Vous distes mal et agarda¹⁰ le eyde.

17. SCUT v. SCUT.¹¹

I.¹²

Bref de dreit secundum consuetudinem manerii etc. le tenaunt chalenga etc. pur ceo qe ceo feut vn bref de dreit et il vsa saccioun en nature dassise de nouele disseisine saunz faire protestacion etc. daccioun a la liuere de seon bref en quelle manere il voleit vser etc. et hoc non obstante iugement feut qil respoundisset.

Robert Scot et Iohane sa femme porterent bref de dreit secundum consuetudinem manerii en la Court le Counte de lancastre ¹³de Pokenyng¹⁴ uers secile scot le bref attame en mesme la Court Robert Scot et Iohane sa femme vindrent en la chauncellerie et firunt lour suggestion qe la Court lour auoit faille de dreit tant siwerunt qil fierunt venir le recorde et le bref original deuant les Iustices en bank et auoient bref etc. non omittas propter libertatem etc. pur ceo qe le viconte

¹ retournereint, X. ²⁻³ This is clearly a repetition due to the scribe's carelessness, and I have ignored it in translating. ⁴ priours, X. ⁵ il, M.

⁶⁻⁷ eussez eide, M, X. ⁸ purrez, M; poiez, X. ⁹ B., M, X. ¹⁰ eit, X.

¹¹ Reported by B, D, M, X, and Z. Names of the parties from the Plea Roll.

¹² Text of (I) from B collated with M and X. The headnote in X is: De recto de tenementis en aunciene demesne ou le bref fut euse en lieu de nouele disseisine.

¹³⁻¹⁴ et se pleindrent, X.

And he prayed aid of B. and tendered a fine which witnessed that the tenements were surrendered to this same John to have etc. for his whole life ; and upon John's death the tenements were to remain to B., to have etc. to him and the heirs of his body etc. ; and after his death the tenements were to remain to etc. and to the heirs of his body issuing, and after his death to C. and to the heirs of his body etc. And after his death to D. and to the heirs of his body issuing. And therefore John prayeth aid by the form of the fine.

Stonor. You ought not to have aid, for if you were to have aid it would amount to supposing that he of whom you had aid could plead a plea of a higher nature than you can plead, but he could not do so ; for the fine giveth you as great advantage as it giveth him. Further, the fine giveth you power to vouch without him ; therefore there is no need for you to have aid. Yet again, if you be allowed to have aid of B., for the same reason that you are allowed aid of him, he, for the same reason that you get aid from him, will have aid of C., and consequently everyone to whom remainder is tailed will have aid of the others.

BEREFORD C.J. What you say is not so—and he granted the aid.

17. SCUT v. SCUT.¹

I.

In a writ of right according to the custom of the manor etc. the tenant took the objection that the plaintiffs were using this writ of right as though it were a writ of novel disseisin, while they had, at the delivery of the writ, made no protestation as to the manner in which they intended to use it. But nevertheless it was ruled that the tenant should answer.

Robert Scut and Joan his wife brought a writ of right according to the custom of the manor in the Earl of Lancaster's Court of Pickering against Cecily Scut. The case was commenced in that same Court. Robert Scut and Joan his wife came into the Chancery and made their suggestion² that the Court had failed to do them right, and so sued out a writ to make the record and the writ original come before the Justices in the Bench ; and they had a writ etc. of *non omittas propter libertatem etc.*, because the Sheriff had returned that

¹ See the Introduction, p. xxxviii above.

² A 'suggestion' was an *ex parte* statement.

auoit retorne qil auoit maunde a baillifs¹ de la fraunchise qe rien etc. qar les tenementz furunt en la fraunchise le counte qad retorne etc.

Burtone counta en tiele manere Ceo vous moustre etc. ²atort les deforce iij. acres de terre od les apurtenaunces en Pykerynge³ et pur ceo etc. qe ceo est ⁴seon dreit⁵ et dunt ele mesmes feut seisi etc. en seon demesne come de fee et de dreit en temps de pees etc. les esplees prist etc. montant a demi [marc] et plus come de fee et dreit des queux mesme cele Secile disseisa mesme ceux⁶ etc. puy le primere passage etc. et qe tiel seit le dreit etc. en ad siwet et dereigne bone solom les vsages dil maner de Pykerynge.

Scrop. Ceo est vn bref de dreit en aunciene demene solom usage etc. et homme pust auer diuerse acciouns et vous ne festes mencioun en countaunt a quele accioun vous voilletz estre respoundu a cesti bref sur quele accioun homme vse de faire sa protestacioun a la liuere de seon bref et sur cesti bref nule protestacioun nest fait ⁷et demaundoms iugement⁸ en quele manere vous voilletz ceste accioun vsor.

Denum. En la manere come nous auoms counte voloms nous vsor nostre accioun et la Court lad bien entendu ceo⁹ qe nous auoms counte.

Scrop. Donqe entendoms nous qe vous voillietz pleder en forme de assise de nouele disseisine.

Denum. Distes ceo qe vous voilletz.

Berr. Il ne pledent pas icy come a la commune ley.

Scrop. ¹⁰Si vous soietz paye de ceo nous dirroms qe nous vous disseisimes pas prest¹¹ etc.

Denum. ¹²Prest del auer quod sic.¹³

¹⁴Et nota quod Herle Malmerthorpe Toudeby Scrop quant il furent hors a¹⁵ lour examinement quid¹⁶rent bien auoir ioint la mise et furent en awer sil deuerint ioindre la mise solom les custumes¹⁶ de maner ou noun.

Denum pria bref a viconte ¹⁷qil feit¹⁸ venir des foreyns.

*Berr.*¹⁹ Nous mandroms bref a viconte qil face venir bone pays.

*Denum.*²⁰ Auant ces heures en mesme cele plee si auietz vous maunde

¹ X omits. ²⁻³ M omits. ⁴⁻⁵ le dreit I., X. ⁶ cele W., M; cesti I., X. ⁷⁻⁸ X omits. ⁹ coment, X. ¹⁰⁻¹¹ vous soiez paie de ceo qe nous dioms qe vous disseisimes pas, X. ¹²⁻¹³ From X; B has: *Denum* prist ladornement. ¹⁴⁻¹⁵ From M and X. B has: *Scrop* [followed by some word which has been obliterated] quant il furent en. ¹⁶ vsages, X. ¹⁷⁻¹⁸ de fere, M, X. ¹⁹ Herle, M. ²⁰ X omits *Denum* and runs his speech into the preceding one.

he had sent his precept to the bailiffs of the franchise who had done naught etc., for the tenements were in the franchise of the Earl, who hath return etc.

Burton counted in manner following: This showeth you etc. wrongfully deforceth them from four acres of land and the appurtenances in Pickering; and wrongfully because it is Joan's right of which she was seised etc. in her demesne as of fee and right in time of peace etc., took the esplees etc. amounting to the value of half a mark and more as of fee and right; and of these same this Cecily disseised these same [Robert and Joan] since the first passage etc.; and that such is her right etc. she hath suit and good proof according to the [customs of the] manor of Pickering.

Scrope. This is a writ of right in ancient demesne according to the custom etc., and actions of different kinds may be brought [by such a writ]; and in counting you did not specify to what kind of action you want to be received under this writ. It is the practice that protestation should be made upon the delivery of the writ as to the nature of the action, but upon [the delivery of] this writ no protestation was made as to the nature of the action for which you want to use this writ; and we ask judgment.

Denham. We mean to prosecute our action after the fashion of our counting, and the Court hath clearly understood how we have counted.

Scrope. Are we to understand, then, that you mean to plead after the form of an assize of novel disseisin?

Denham. Say what you like.

BEREFORD C.J. The pleading here is not as it is under the common law.

Scrope. We will tell you that we did not disseise you. If you are satisfied with that, ready etc.

Denham. Ready to aver that you did.

And note that *Herle*, *Malberthorpe*, *Toudeby* [and] *Scrope*, when they were considering the point outside the Court were [at first] inclined to join the mise, but [afterwards] doubted whether, according to the custom of the manor, the mise should or should not be joined.¹

Denham prayed a writ to the Sheriff directing him to summon jurors from outside the franchise.

BEREFORD C.J. We will send a writ to the Sheriff ordering him to make a good jury come.

Denham. Before now, in this same plea you sent to the Sheriff

¹ From Version III, below we see that they did not join the mise.

toux heures al viconte qil fait etc. et qil ne lessate etc. pur la fraunchise et ceo prioms nous qe vous voilletz faire vnqore.

Berr. A faire venir le recorde si maundames nous a viconte etc. vt supra.

Et non habueret¹ [sic] breue vicecomiti quod non omittas etc.

II.²

Vn A. porta soun bref de dreit clos secundum consuetudinem manerii en lauciene demeyne le Roi et fut remue par le recorde en baunk et counta en ceste forme Ceo vous mustre A. etc. atort ly deforce etc. pur ceo atort qe ceo soun dreit dount il mesmes fut seisi en son demeyne com de fee et de dreit en temps le Roi [etc.] les esplees etc. et des queux [sic] meyme cely B. disseisa lauauitdit A. puis le primer passage etc. et qe tiel seit son dreit il en ad seute et dreyne bone solom lusago du maner.

Scrope. Vous auez entendu coment il ad counte en ceo bref de dreit solom vsage du maner mes vsage du maner serreit pur ceo qe le bref est touz iours vn qil fet protestacioun solom la nature de quel bref il voleit seure mes ore est son counte en noun certeyn en taunt qe nous ne poms estre acerte le quel il veot seure solom la nature de bref dentre ou de nouele disseisine qe il ad counte de quibus predictus B. disseisiuit etc. et demaundoms iugement.

Et cel exeepcioun ne fut pas alowe mes il plederent outre et diseyent qil ne ly disseisa pas com en forme dassise et douns dit *Scrop* qil couendreit qil vst dit en son counte si il vst bon Counte qe atort et saunz iugement ly disseisa de son fraune tenement.

Denom. Sire pur ceo qe le counte de Lancastre est tenaunt de la terre et les baillifs le counte vnt pleyn retourn etc. nous prioms bref a viconte qil faee venir des soriures [sic].

Berr. Nous maunderom bref a viconte mes nous enparleroms riens de soriures en supposaut qe le viconte poet auxi bien fere dedeinz eynz com de soriures.

¹ habuit, *M*, *X*.

² Text of (II) from *D*.

bidding him make come etc. and not to omit etc. on account of the franchise; and we pray that you will do the same again.

BEREFORD C.J. We sent to the Sheriff to order him to make the record come as above.

And he did not get the writ of *non omittas* to the Sheriff.

II.

One A. brought his writ of right close according to the custom of the manor in ancient demesne of the King, and the record was removed into the Bench; and the plaintiff counted in this form: A. sheweth you this etc. wrongfully deforceth him etc., and wrongfully for this reason, that this is his right of which he himself was seised in his demesne as of fee and right in the time of King etc., the esplees etc., of which this same B. disseised the aforesaid A. after the first passage etc.; and that this is his right he hath good suit and proof according to the custom of the manor.

Scrope. You have heard how he hath counted in this writ of right according to the custom of the manor; but the custom of the manor in regard to this writ is that a plaintiff shall always make protestation as to the nature of the action for which he meaneth to use it.¹ But here the plaintiff's count is not definite, so that we cannot be certified whether he meaneth to sue according to the nature of a writ of entry or of novel disseisin; for he hath counted 'of which the aforesaid B. disseised etc.,' and we ask judgment.

And this exception was not allowed, and the defendant pleaded over after the form of pleading in an assize [of novel disseisin] and said that he had not disseised the plaintiff; and then *Scrope* said that the plaintiff ought to have said in his count, to make the count a good one, that the defendant wrongfully and without judgment disseised him of his freehold.

Denham. Sir, because the Earl of Lancaster is tenant of the land and the Earl's bailiffs have full return etc., we pray a writ to the Sheriff to make strangers² come.

BEREFORD C.J. We will send a writ to the Sheriff but we shall say naught therein about strangers, as we think that the Sheriff hath power to make both suitors and strangers come.³

¹ The text is corrupt here as elsewhere in the report, but the meaning is fairly clear.

² i.e., such as were not suitors of

the Earl's court.

³ The text is corrupt, and the translation here and elsewhere is necessarily conjectural.

Burt. Sire lestatut dit qe apres non omissas vne fooz suy tuz les brefs tanqe le plai dure feurount mencion quod non omissat etc. par qei nous prioms qil seit maunde a viconte qil face venir sereuiz [*sic*] pus qe la defaute est troue en les baillis etc.

III.¹

Dreit secundum consuetudinem manerii.

Bref de dreit secundum consuetudinem manerii fut remue en Baunk pur ceo qe la court failly de dreit.

Denom counta qil fut seisi en son demene com de fee et de dreit des quels le tenaunt luy disseisi et tendi suite et dereyne solone les vsages du manour.

Scrope. Vous dussez auer fait protestacion auant ceo qe vous contestes en nature de quel accion vous voletz suivre.

Denham. Nostre counte vous ad apris etc.

Scrop fut en awer sil deust ioindre la myse solone vsage etc. et pus dit qil luy disseisi pas prest etc. saunz ioindre mise et alii econtra. Quere si le count abaterait pur ceo qil counta qil fust seisi en son demene com de fee et dreit de pus qe sa accion fut de disseisine faite a luy mesme.

Note from the Record.

De Banco Roll. Mich., 8 Edw. II. (No. 207), r. 213, Yorkshire.

Iohanna filia Roberti Scut de Kirkeby Moresheued alias in Curia Thome Comitis Lancastrie de Pykering petiit uersus Robertum Scut de Kirkeby Moresheued et Ceciliam vxorem eius quinque messuagia et sex bouatas terre cum pertinentiis exceptis decem acris terre in Pykering vt Ius etc. per paruum breue de recto clausum secundum consuetudinem manerii etc. Ita quod post placitum inde in eadem curia inter partes predictas inchoatum ad querelam ipsius Iohanne Domino Edwardo Regi patri Regis nunc suggerentis predictos Robertum et Ceciliam tenementa predicta postquam capta fuerunt in manum predicti Comitum Domini Curie predictae per defaultam quam iidem Robertus et Cecilia fecerunt in eadem Curia prefato Comiti reddidisse et sic iusticiam eidem Iohanne in eadem Curia per hoc differri Idem Dominus Rex pater etc. precepit vicecomiti quod assumptis secum quatuor discretis et legalibus militibus de Comitatu suo in propria persona sua accederet ad Curiam predictam ad videndum quod plena iusticia exhiberetur prefate

¹ Text of (III) from Z.

Burton. Sir, the Statute saith that after the *non omittas* hath once been sued out all writs so long as the plea continueth shall order *quod non omittat etc.*, and therefore we pray that a writ be sent to the Sheriff ordering him to make strangers come, since default hath been found in the bailiffs etc.

III.

Writ of right according to the custom of the manor.

A writ of right according to the custom of the manor was removed into the Bench because the Court [of the manor] had failed to do justice.

Denham counted that the plaintiff was seised in his demesne as of fee and right and that the tenant had disseised him of these tenements, and he tendered suit and proof according to the customs of the manor.

Scope. Before you counted you ought to have made your protestation disclosing the nature of the action you intended to bring.

Denham. Our counting hath shown you etc.

Scope was in doubt whether he ought to join the mise according to the custom etc.; and afterwards he said that the tenant had not disseised the plaintiff; ready etc., without joining the mise, and the other side joined issue. *Quære* whether the counting would abate because he counted that the plaintiff was seised in his demesne as of fee and right, seeing that the ground of his action was that he had been disseised.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 213, Yorkshire.

Joan, daughter of Robert Scut of Kirkby Moorside, did at other time in the Court of Pickering of Thomas, Earl of Lancaster, claim against Robert Scut of Kirkby Moorside and Cecily, his wife, five messuages and six bovates of land, together with the appurtenances, saving ten acres of land in Pickering, as her right etc. by a little writ of right close according to the custom of the manor etc., with the consequence that after the plea thereof between the aforesaid parties had been begun in the same Court, upon the complaint of the same Joan to the lord King Edward, father of the King that now is, alleging that the aforesaid Robert and Cecily had surrendered the aforesaid tenements, after that they had been seized into the hand of the aforesaid Earl, lord of the aforesaid Court, by reason of the default which the same Robert and Cecily made in the same Court, to the aforesaid Earl, and that thereby justice was consequently delayed to the same Joan, the same lord King, father etc. commanded the Sheriff that, taking with him four discreet and law-worthy knights of his county, in his own person he should go to the aforesaid Court to see that full justice should be done to the aforesaid Joan in the aforesaid plea, or should signify etc. the cause to the

Note from the Record—continued.

Iohanne in loquela predicta vel causam prefato Regi patri etc. significaret etc. Idem quia vicecomes retornauit quod ad Curiam illam accessit virtute dicti breuis et sectatores eiusdem Curie pro eo quod prefati Robertus et Cecilia tenementa predicta in Curia illa in manum dicti Domini sui reddiderant ad iudicium inde reddendum et partibus inde Iusticiam faciendam procedere recusauerunt per quod Dominus Rex nunc post mortem dicti patris sui precepit vicecomiti quod assumptis secum quatuor discretis et legalibus Militibus de Comitatu suo in propria persona sua accederet ad Curiam predictam et in plena Curia illa recordari faceret loquelam predictam Et recordum illud vna cum breui originali domini Regis patris etc. cum omnibus aliis ei tangentibus haberet hic a die Pasche in tres septimanas anno regni eiusdem Regis nunc primo sub sigillo et sigillis etc. Et partibus eundem diem prefigeret etc. Ad quem diem vicecomes misit recordum etc. et mandauit quod prefixerat diem partibus etc. et postea misit originale etc. predicto recordo consutum Et continuato hinc inde processu in Curia hic prout patet termino sancti Hillarii anno regni domini Regis nunc tercio et alibi modo scilicet a die Sancti Michaelis in tres septimanas veniunt partes predictae per attornatos suos Et eadem Iohanna per attornatum suum petit uersus predictos Robertum et Ceciliam predicta tenementa cum pertinenciis exceptis etc. vt Ius etc. per Idem primum breue de Recto etc. Et vnde dicit quod ipsamet fuit scisita de predictis tenementis cum pertinenciis exceptis etc. in dominico suo vt de feodo et Iure tempore pacis tempore predicti Edwardi Regis patris domini Regis nunc capiendi inde explecias ad valenciam etc. Et de quibus iidem Robertus et Cecilia iniuste et sine Iudicio disseisuerunt ipsam Iohannam post primum etc. Et quod tale sit Ius suum secundum consuetudinem manerii de Pykering offert etc.

Et Robertus et Cecilia defendunt Ius suum quando etc. Et bene defendunt quod ipsi non disseisuerunt predictam Iohannam de predictis tenementis sicut eadem Iohanna dicit Et de hoc ponunt se super patriam Et Iohanna similiter etc. Ideo preceptum est vicecomiti quod venire faciat hic in crastino Purificacionis beate Marie xij. etc. per quos etc. Et qui nec etc. Quia tam etc.

18. ELEANOR (WIFE OF MATTHEW, SON OF JOHN)
v. HALFKNIGHT.¹I.²

Vne femme porta bref de dower uers C.

Malb. Dower ne deit ele auer qe vn T. nostre auncestre porta vn bref dentre sur la nouele disseisine uers vn Wauter de Bek et I. sa femme de mesme ceux tenementz en les queux etc. si noun puisse la

¹ Reported by *B* (twice), *C*, *E*, *M*, *H*, and *X*. Names of the parties from the Plea Roll. ² Text of (1) from *B* (first version).

Note from the Record—*continued.*

aforesaid King, father etc. Because the same Sheriff returned that he went to that Court by virtue of the said writ, and that the suitors of the same Court, because the aforesaid Robert and Cecily had surrendered in that Court the aforesaid tenements into the hand of their said lord, refused to proceed to do justice in respect of them, therefore the lord King that now is, after the death of his said father, commanded the Sheriff to take with him four discreet and law-worthy knights of his county and go in his own person to the aforesaid Court, and in that full Court to have the aforesaid proceedings recorded, and to have that record, together with the writ original of the lord King, father etc. and all other things relating thereto, here three weeks after Easter in the first year of the reign of the same King that now is, under the seal and seals etc., and to notify the parties of that same day etc. On which day the Sheriff sent the record etc., and sent word that he had notified the parties of the day etc., and afterwards he sent the writ original etc. stitched to the aforesaid record. And process therein being continued from that time in the Court here, as appeareth in the [roll of the] term of St. Hilary in the third year of the reign of the King that now is and elsewhere, now, to wit, three weeks after the Feast of St. Michael, the aforesaid parties come by their attorneys, and the same Joan, by her attorney, claimeth against the aforesaid Robert and Cecily the aforesaid tenements with the appurtenances, saving etc. as her right etc. by the same former writ of right etc. And she saith thereof that she herself was seised of the aforesaid tenements together with the appurtenances, saving etc., in her demesne as of fee and right in time of peace, in the time of the aforesaid King Edward, father of the lord King that now is, taking esplees therefrom to the value etc., of which tenements the aforesaid Robert and Cecily disseised unjustly and without judgment the same Joan after the first [passage] etc. And that such is her right according to the custom of the manor of Pickering she doth offer etc.

And Robert and Cecily deny the right of Joan when etc., and they wholly deny that they disseised the aforesaid Joan of the aforesaid tenements as the aforesaid Joan doth say. And of this they put themselves upon the country. And Joan doth the like etc. So the Sheriff is ordered to make come here on the Morrow of the Purification of Blessed Mary twelve etc. by whom etc., and who neither etc., because both etc.

18. ELEANOR (WIFE OF MATTHEW, SON OF JOHN)
v. HALFKNIGHT.¹

I.

A woman brought a writ of dower against C.

Malberthorpe. She ought not to have dower, for one T., our ancestor, brought a writ of entry founded upon novel disseisin against one Walter of Bek and J., his wife, to recover these same tenements into which

¹ See the Introduction, p. xl above.

disseisine qe vn P. le fitz Matheu auneestre seon baron en fist a B. seon auneestre et recouery vers mesme ceux R. [sic] et I. par defaute apres defaute et demaundoms iugement desicome nostre auneestre recouery etc. vers W. et I. deygne dreit qi [sic] dil dreit seon baron si ele deyue dower auer.

Denum. Vous ne dedistes mye la seisine nostre baron ne rien nalleggetz forsqe etc.

II.¹

Dowere ou le tenaunt allegga encountre la femme qil recoueri les tenementz dun eigne droit etc.

Vn A. porta bref de dower vers B. et demanda la terce partie de certeynes tenementz.

Herle. Quant a la terce partie de les deux parties nous vous dioms qe le baroun etc. ne fust vnqes seisi issi qe dower la pout et quant al remenant nous dioms ²qe nous auoms³ recoueri les tenementz par iugement en la court le Roi.

Scrop. Par quel iugement.

*Toud.*⁴ A ceo nauoms pas mestier ⁵a respoundre⁶ qar nous ne sumes pas en cas destatut par quei etc.

Berr. Il couent qe vous moustrez a la court vostre recouerer et vostre⁷ iugement qar solom ceo qe vostre recouerer feut la femme prendra issue.

Et feut chace a moustre.

Toud. Nous dioms qe nostre ael feut disseisi des tenementz dount dower est demaunde par vn qe fust auneestre vostre baron issint qe apres la mort ⁸nostre auneestre⁹ nous portames bref dentre sur la disseisine vers ¹⁰vn Hige auneestre¹¹ vostre baron ou il fist defaute apres defaute par qei etc.

**Denum.* Vous veitz bien coment il alegge vn iugement a qi nous ne nostre baron ne sumes parti par quei ne poms a cel iugement respoundre mes nous volums auer la seisine nostre baron iugement.

Malm. Donqe grauntez vous le iugement.

Denum. Nous ne poms graunter ne dedire qar nous ne nostre baron ne fumes pas partie etc.

Toud. Ou vous deinetz estre dowe par commune ley ou par

¹ Text of (II) from *B* (second version) collated to a certain point with *M* and with *X*. The headnote in *X* is: De dote ou le tenaunt allegga recouerir etc. uers altre qile baroun la femme etc. ²⁻³ *M* omits. ⁴ *M* omits. ⁵⁻⁶ *M* omits. ⁷ par quele, *M*, *X*. ⁸⁻⁹ From *M* and *X*; vostre baroun, *B*. ¹⁰⁻¹¹ I. vnele, *M*; Philip vnele, *X*. * From this point *M* and *X* are not collatable with *B*. The continuation of the report as given in *M* and *X* follows below.

etc.¹ save after the disseisin which one P., the son of Matthew, the ancestor of the claimant's husband, did to B., the defendant's ancestor, and recovered them against that same Walter and J., his wife, by default after default; and we ask judgment whether, seeing that our ancestor recovered etc. against Walter and J. by an earlier title than the title of the claimant's husband, she is entitled to dower.

Denham. You do not deny our husband's seisin nor allege aught save etc.

II.

Dower. The tenant pleaded against the wife that he had recovered the tenements [of which she claimed dower] by a title older than her husband's.

One A. brought a writ of dower against B. and claimed the third part of certain tenements.

Herle. As to the third part of the two parts we tell you that the husband etc. was never seised so that he could dower her; and as to the residue we say that we recovered the tenements by judgment in the King's Court.

Scrope. By what judgment?

Toudeby. It is not incumbent on us to tell you, for we are not within the provisions of the statute.² Therefore etc.

BEREFORD C.J. You must show the Court what recovery and what judgment you got, for the wife will take her issue according to the character of your recovery.

And he was obliged to show this.

Toudeby. We say that our grandfather was disseised of the tenements of which dower is claimed by one that was ancestor of your husband, so that we, after the death of our ancestor, brought a writ of entry after disseisin against one Hugh, ancestor of your husband, who made default after default; wherefore etc.

Denham. You will observe that he is alleging a judgment to which neither we nor our husband was a party, and therefore we cannot make answer to that judgment; but we are ready to aver our husband's seisin. Judgment.

Malberthorpe. Do you, then, admit the judgment?

Denham. We can neither admit it nor deny it, for neither we nor our husband was a party to it etc.

Toudeby. You must have dower either by the common law or by

¹ This *etc.* is equivalent to 'they had not entry.'

² Statute of Westminster II. cap. iv.

statut par commune ley nient qe la ou homme perdi par defaute dames ne ferunt [*sic*] dowes ne par statut si vous ne poetz mustre le dreit de vostre baroun et si vous voillietz ceo faire nous pledroms a vous voluntiers.

Denum. A la commune ley femmes ne furunt pas barres fors la ou le baron perdy par defaute ne par statut nest ele chace a pleder lestat son baron qar le baron ne ele ne furunt pas parti a nul iugement.

Toud. Vostre baroun aliena a celui vers qi etc. et nous ne purroms porter nestre bref forqe vers le tenaunt et demaundoms iugement depuys qe par nostre recouerer chescun maner destat feut anenti en le meen tenz si vous etc.

Denum. Ore demaundoms nous iugement de puyz qe vous auetz conceu qe nostre baron feut seisi et alena ou par cas le tenaunt perdy par collusion en ostant nous de nostre dower ou nostre baron ne feut pas parti au iugement par quei vous ne poetz moustrer qe nous sumes en cas de statut ¹et demaundoms iugement² et prioms nostre dower.

Malm. De meilloure condicioun ne serrietz vous qe ne serroit le heir vostre baroun de qi douwement etc. mes sil feut par voie daccioun il serroit rebote par le iugement par qei etc. et depuys qe vostre baron serroit mesmes rebote etc. par vostre recouerer si serroit le heir enherite et nous desherite.

Denum. Vous distoz mal la reuercioun serra toux iours a celi deuers qi le recouerer est fait.

Herle. Nous serroms desherite pur terme de la vie la femme.

Toud. Nous recouerimes les tenementz par iugement vt supra etc.

Herle. Si la femme recouere oree dower vers nous hoc non obstante nostre accioun nous est reserue vers la femme et si nous portoms nostre bref vers luy ele ne pust vouchier ne prier en eyde pur ceo qe ioe seu demandant et auxibien poet ele pleder le dreit son baron par la ou ele est hors com par la ou ele est eyns.

Scrop. Si ele seit eynz et bref seit porte vers luy ele pust vouchier le heir le baron et si il viegne et ceo ioigna etc. il pust pleder le dreit le baron pur mcintener le douwer la femme et si ne pust ele fere par la ou ele est hors.

Denum. Pleder lestat son baron ne pust ele la ou ele est hors si ele ne fust en cas de statut la ou le baron perde par collusioun etc. et vous ne poetz moustrer qe le dreit nostre baron feut trie iugement.

¹⁻² These words seem a superfluous repetition.

statute. You cannot have it by the common law, for where a man lost by default ladies were not dowered; nor by statute unless you can show your husband's right, and if you want to do that we are ready to plead with you.

Denham. At the common law wives were not barred except where the husband lost by default; nor is she obliged by statute to plead her husband's estate, for neither the husband nor she was party to any judgment.

Toudeby. Your husband alienated to him against whom etc., and we could not have a writ save against the tenant; and, since every manner of mesne estate was defeated by our recovery, we ask judgment whether you etc.

Denham. Now, since you have admitted that our husband was seised and alienated, and peradventure the tenant lost by collusion, in order to bar us from our dower, [in an action] to the judgment in which our husband was not privy, so that you cannot show that we come within the provisions of the statute, we ask judgment and pray our dower.

Malberthorpe. You should not be in better case than that in which the heir of your husband, of whose endowment etc. would be; but if he were bringing an action he would be rebutted by the judgment. Therefore etc. And though your husband himself would be rebutted etc., yet, if you were to recover, his heir would be put into the inheritance and we should be disinherited.

Denham. You are wrong. The reversion will always be to him against whom the recovery was gotten.

Herle. We shall be disinherited for the term of the wife's life.

Toudeby. We recovered the tenements by judgment *ut supra* etc.

Herle. If the wife should now recover dower against us, our right of action against the wife is, notwithstanding that, reserved to us; and if we bring our writ against her she can neither vouch nor pray in aid, for [then] I should be claiming [and not defending]; and she can plead the right of her husband just as well when she is out of seisin as when she is in seisin.

Scrope. If she be in seisin and a writ be brought against her she can vouch her husband's heir; and if he come and join etc. he can plead the right of the husband in support of the wife's dower; but she could not do that if she were out of seisin.

Denham. She cannot plead her husband's estate if she be out of seisin unless she come within the provisions of the statute, that is, if the husband lose by collusion etc.; and you cannot show that our husband's right was ever tried. Judgment.

Scrop Iustice. Si la femme ne recouere seon dower il ensiwera graunt duresse qe par le malues voler le baron la femme perdra son dower qar il durra les tenementz a vn autre et puyz celi ly fra enpleder et perdera par defaute apres defaute et puyssse prendra les tenementz a terme de sa vie et apres son deces la chose demora a ces heirs et issint perdra ele dower qe ley ne seoffre pas.

III.¹

Scrop. Nous volloms auerer nostre bref et coment qe vous alleggez vostre recouerir par iugement ²nous vous dioms qe iugement³ se tailla par veredit sur la defaute et neinye sur le dreyt trier par qei cel iugement ne⁴ nous osta pas de nostre accioun.

Herle. Nous est auis qe assez tailla le iugement en le dreyt kar nous ne ly poms⁵ pas constreyndre de venir en court par qei en ⁶vous nest il pas qe le dreyt ne fut autrement⁷ qe la ley suppose et entent qe quant le tenaunt en play de terre fet defaute par qei est agarde al demaundant etc. ⁸ley entende qe⁹ le demaundant ad dreyt en sa demaunde et qe le tenaunt nad pas en sa tenaunce par qei assez en le dreyt sey tailla le iugement.

[*Toud.* ?] *Ad idem.* Quant tenementz sunt perduz par defaute etc. et bref seit sussite pur rescouerir lestat qe fut perdue par defaute il couient qe le iugement si ele serra reuerse qe ceo seit ala suyte cely qe fut partie alautre¹⁰ parole mes ore ne sumes mie en cas de statut qe la femme ne sey poet pas loyndre al heir ne ele mesme ne poet estre partie a reuerse[r] lautre iugement ka [*sic*] ele ne poet pleder si noun al fraunk tenement par qei nous demaundoms iugement si ele serra respoundu.

Scrop. Si nous serrons ore en ceo cas ouste de nostre dower en-suyreit graunt incouenient kar si le baroun alienast ces tenementz et le feffe¹¹ par collusioun se fedroit¹² estre enplede etc. per consequens par tiele collusioun et ¹³tiel malenaentz¹⁴ iammes ne recouerait dame dower et demaundoms iugement si par tiel respouns qil mette auant deuoms estre barre daccioun.

Toud. Sire la ou homme¹⁵ poet assigner meschief en lun partie et en lautre le meyndre est a eslire mes si ore ele fut resen et ele recouerast vers nous dower ceo tournereit en nostre disheritaunce et al auantage

¹ Continuation of the report as given by *M* collated with *X* from the point marked * on p. 100 above, after which these reports are no longer collatable with *B*. ²⁻³ qe, *X*. ⁴ Supplied from *X*. ⁵ poasoms, *X*. ⁶⁻⁷ nous il pas qe le dreyt nest autrement, *X*. ⁸⁻⁹ *X* omits. ¹⁰ al iugement altre, *X*. ¹¹ tenaunt, *X*. ¹² fest, *X*. ¹³⁻¹⁴ tieux maluestes, *X*. ¹⁵ Added from *X*.

SCROPE J. If the wife do not recover her dower great hardship will follow, for by the malevolence of the husband a wife might lose her dower, for he might grant tenements to another who would afterwards bring an action against him and he would [allow himself to] lose by default after default, and then he would take the tenements for the term of his life with remainder to his heirs, and so the wife would lose her dower, which the law will not suffer.¹

III.²

Scrope. We will aver our writ ; and, though you allege that you recovered by judgment, we tell you that that judgment was given by reason of default being found and not upon a trial of the right. That judgment doth not, therefore, bar us from our action.

Herle. We are of opinion that the judgment was sufficiently given on the merits, for we could not force the defendant to come into Court ; and therefore it is not open to you to say that the right was other than the law supposeth and understandeth it to be ; for when the tenant in a plea of land maketh default judgment is thereupon given for the claimant etc., for the law taketh it for granted that the claimant hath the right to that which he claimeth, and that the tenant hath no right in his tenancy ; and therefore the judgment was sufficiently given on the merits.

[*Toudeby*?] *ad idem.* When tenements are lost by default etc. and a writ be brought to recover the estate which was lost by default, then, if the judgment is to be reversed, it ought to be at the suit of him that was defendant in the other action. And we are not now in the circumstances contemplated in the statute, for the wife cannot join herself with the heir nor can she herself be party to reversing the other judgment, for she cannot plead to any higher estate than a freehold ; and therefore we ask judgment whether she shall be answered.

Scrope. If in these circumstances we be ousted of our dower a great incongruity [of law] will follow ; for if a husband were to alienate his tenements and the feoffee, by collusion, procured himself to be sued etc., the consequence of such collusion and trickery would be that no lady would ever recover dower ; and we ask judgment whether by such an answer as they make we ought to be barred from our action.

Toudeby. Sir, where a hardship must fall upon one party or the other the lesser hardship is to be chosen ; but if the wife were to be received now and were to recover dower against us, the result would be that

¹ In SCROPE J.'s remarks there seems to be some confusion, created no doubt by the reporter, between the

actual case and a possible one.

² See note 1 on the opposite page.

le heir le baroun qe nul dreyt ne ad ¹et cest² greyuour duresce mes si ele fut rebote daccioun qe ne demaunde si noun fraunc tenement ³ceo serreit⁴ le meyndre duresce par qei ele serra de resoun plus tost rebote qe nous disherite.

Scrop. Vous [ne] serrez a ceo resceu la ou vous assignez greyndre duresce qe si la femme reconerast en ceo cas le heir soun baroun serreit enherite en disheritaunce de vous nous dioms qe nanyl kar vous prierez vsset vostre accioun vers ly et desrener le dreyt solom la nature⁵ du bref qe vous purchassates vers cely qe perdit par defaute et issint il semble qe vostre respouns ne ly pas.

Herle. Ieo pos qe moun Ael moerge seisi de certoynz tenementz como de fee et de dreyt et apres sa mort vn estraunge entre et aliene et cely alyene outre ⁶et issint⁷ taunqe a quatre degrez ou v. et ieo porte bref vers le tenaunt et reconere ne serreit ceo pas tort qe tous les femmes auereynt dower pur la seisine lour barouns en le meen temps quasi diceret sic.

Et sic pendet etc.

IV.⁸

Dower ou vn recoueryr en vn bref dentre en le post sur defaute apres defaute vers le baroun la femme qe ore porte son bref fut mys en barre.

Alice qe fut la femme Matheu le fiz Ion demaunda dower vers vn Ion.

Scrop. Nous vous dioms qe vn Matheu le fiz Peres ael Ion iadis baroun mesme cesti femme disseisi vn Robert soun auncestre le quel Ion aliena ceux tenementz a vn Wauter de Bek et a Isabel sa femme vers lez queus il recouery ceus tenementz par vn entre post disseisinam et demaundoms iugement depus qil auoit recouery mesmes lez tenementz de plus haut qe ne fut lestat le baroun de qei ele prent sa accioun si ele pusse accioun auer.

Denom. Par quel iugement.

Scrop. Ceo nauoms mestre a dire depus qe nous voloms auerer le recouerir par recorde.

Denom. Si vous volez vsset cel recouerir pur respouns il couent qe vous le facez tel qil nous put barrer mes le recouerir se purra fere diuersement ou sur defaute ou sur accioun ou si le recouerir fut sur

¹⁻² From X; en ceo est, *M*.
tenure, *M*.

⁶⁻⁷ Added from X.

³⁻⁴ Supplied from X.
⁸ Text of (IV) from C.

⁵ From X;

we should lose our inheritance, and the husband's heir, who hath no right in it, would get it ; and this would be the greater hardship ; while if the wife, who is claiming only a freehold, be rebutted from her action, that would be the lesser hardship. She, therefore, should rather be rebutted from her action than we should lose our inheritance.

Scrope. You will [not] be received to that assignment of the greater hardship when you say that, if in these circumstances the wife recovered, her husband's heir would then take the inheritance and you would be disinherited. We deny it. For you could pray to have your action against him and you could prove the right in accordance with the nature of the writ you brought against him who lost by default ; and so it seemeth that your answer goeth for naught.

Herle. I put the case that my ancestor die seised of certain tenements as of fee and right, and that after his death a stranger entereth and alienateth and the alienee alienateth over, and so on for four or five times, and I bring a writ against the [latest] tenant and recover, would it not be unjust if all the wives were to have dower by reason of the seisin of their husbands in the meantime ?—*intimating that it would be so.*

And so it hangeth etc.

IV.

Dower, where a recovery by a writ of entry in the *post* got by default after default against the husband of the present plaintiff was set up in bar of her claim.

Alice that was the wife of Matthew, the son of John, claimed dower against John.

Scrope. We tell you that one Matthew, the son of Piers, grandfather of John, who [sc. Matthew] was aforetime husband of this same woman, disseised one Robert, the defendant's ancestor ; and the said John alienated these tenements to one Walter of Bec and to Isabel his wife, against whom [Robert] recovered those tenements by a writ of entry after disseisin ; and since he recovered these same tenements by an older title than that of the claimant's husband from whom she deriveth her right of action, we ask judgment whether she can have any right of action.

Denham. By what judgment [was recovery had] ?

Scrope. We need not tell you that, since we will aver the recovery by the record.

Denham. If you want to use this recovery by way of answer you must show that it is such an one as can bar us ; for recoveries may be gotten in divers ways, by default or on the merits. Now if this recovery

defaute il ne barreit pas la femme par quei il couent dire coment le recoueryr se fit.

Scrop. Par defeaute.

Denom. De pus qe vous recouerastes par defeaute iugement si par tel recouerer nous pussez barrer daccioun.

Malm. Si vós volez demorer en ley conyssez le recoueryr.

Denom. Nous auoms pris nostre accioun de lestat nostre baroun par quei le recouerir qe se fit vers autre qe vers ly nauoms mestre a moustre.¹

Malm. De pus qe vous ne poez dedire qe le recoueryr se fit vers Wauter de Bek et Ione sa femme par quel recouerer nous sumes en nostre primer dreyt et lestate vostre baroun et touz lez autres tenauntz pus la disseisine est auenti le quel dreyt nous voloms auerer solom nostre primer accioun si la court le voylle receyure demaundoms iugement si accioun poez auer.

Denom. Le recoueryr se fit vers estraunge de qi estat nous demaundoms rens et par cel recoueryr la seisine nent troue et per consequens lestat nostre baroun nent esteynt et nous ne poms autre estat pleder si noun lestat nostre baroun quel estat nous voloms auerer et lauerement qe vous tendez nest pas receyuable com serreit si le recouerer vst fet vers nostre baroun sil eust fet defeaute de pus qe nous sumes a la commune ley de cete parte.

² [*Malm.*] Si a cesti auerement qe vous allegges ou a nul autre auerement qe vous tendez solom vostre accioun deuoms respoundre et de pus qe vous auez conue qe vous estes a la commune ley par quele ley la femme auerit perdue accioun en ceu cas et demaundoms iugement.³

Denom. Vous dites talent en ceu cas ou le recoueryr se fit vers estraunge la femme ne fut pas barre mes ou le recoueryr fet vers le baroun oppinioun dez Iustices fut contrarie.

Herle. Si vous recouerez vers nous de lestat uostre baroun ne serreit nostre estat esteynt pur uostre vie et issy recouerez a nostre desheritaunce qe serreit duresce.

[*Denum?*]⁴ A [*sic*] la femme feut debote par cel recouerer si ensuerait qe chescun qe purchasa del baroun se freit enpleder feignalment vn accioun de plus haut que lestat le baroun fut par defeaute apres defeaute il barreit chescun femme de accioun qe serreit greignour duresce.

Herle. De meillour condicioun ne deuez estre a demaunder del estat

¹ Probably a mistake for *conestre*. ²⁻³ This appears in the MS. as part of Denham's speech, but it is clearly the speech of Counsel on the other side. Something has slipped out. ⁴ Again the name of Counsel seems to have slipped out.

were gotten by default it would not bar the wife. Therefore you must say how the recovery was gotten.

Scrope. By default.

Denham. Since you recovered by default, judgment whether you can bar us from our action by such a recovery.

Malberthorpe. If you want to demur in law, admit the recovery.

Denham. We have based our right of action on our husband's estate, and therefore we need not admit a recovery got against another.

Malberthorpe. Since you cannot deny that the recovery was gotten against Walter of Bek and Joan, his wife, in virtue of which recovery we are back in our original right, while the estate of your husband and of all the other tenants after the disseisin is annulled, and since we are ready to aver that right of ours in accordance with our earlier action if the Court will receive the averment, we ask judgment whether you can have action.

Denham. The recovery was gotten against a stranger, in right of whose estate we are claiming naught, and seisin was not declared in that recovery, and, consequently, the estate of our husband was not extinguished, and we cannot plead other estate than our husband's, which estate we are ready to aver; while the averment which you offer is not receivable, as it would be if your recovery had been gotten against our husband by reason of his default, since in this matter we are subject to the common law.

¹ [*Malberthorpe.*] [We ask judgment] whether we ought to answer you to this averment which you allege or to any averment you offer consonant with [the theory of] your action; and since you have admitted that you are at the common law, by which law the wife would have lost her right of action in these circumstances, we ask judgment.

Denham. You are talking without warrant. In the present case where the recovery was gotten against a stranger the wife was not barred. But where a recovery was had against the husband the Justices took the opposite view.

Herle. If you recover against us in virtue of your husband's estate, will not our estate be extinguished for your lifetime? And so your recovery will involve our disinherittance, which would be a hardship.

[*Denham.*]¹ If the wife be barred by that recovery it would follow that everyone who purchased from the husband would arrange to have a collusive action brought against him to recover an older estate than the husband's; and so by making default after default he would bar any wife from her action, which would be a greater hardship.

Herle. You ought not to be in a more favourable position to claim

¹ See the text and the footnote thereon.

le baroun qe soun heir ne serreit mes si soun heir demaundast ceux tenementz vers nous nous ly reboteroms de accioun par le recouier de plus haut par qei etc.

A vn autre iour—

Denom fit le primer respouns de pus qil demaunde de lestat soun baroun la qel nest pas defet ne la disseisine troue etc. iugement.

Scrop. En taunt com le tenaunt fit defaute et ne voleit pas respoundre al accioun sy semble qe assez fut laccioun trie.

Scrop Iustice. Mes qe le iugement se tailast sur la defaute par tant ne fut pas laccioun trie ne la disseisine troue et la femme tende dauerer lestat le baroun a qei il vous couent respoundre.

Herle. Nous sumes en tenaunce par le recouer de plus haut dreyt qe la femme demaunde dount si ele recouerait vers nous nent contre esteaunt cel recouier de mesme le dreyt nostre accioun nous serreit sauue deuers la femme et issint ley nous osterait de nostre droit et nous durreit accioun de mesme le droit qe serreit inconuenient.

Pass. Cui damus accionem et illi excepcionem et de pus qe si ele fut eynz nous la osteroms par voye de accioun ergo per viam excepcionis etc.

Denom. Si mon pere me disseyse et contynue cel estat tanque a sa mort et vous apres sa mort entrassez ieo recoueray par lassise de mortdancestor et mesme la ley vous dorreit accioun vers moy de vostre dreyt plus haut et issynt nest pas inconuenient qe vous perdez par cesti bref et recouerez par vn autre.

Herle. Ceo nest pas meruaille qe eco est pur sa garauntie auer mes si la femme fut eluz [*sic*] nul vouchier la serreit saue.

Scrop Iustice. Ele priera le heyr le baroun en eyde et issy purra vostre dreyt estre trie ou si ele fut hors ele ne purra vouchier ne eyde prier et put estre qe ascun de sez auncestres ad relese et quiteclame pus la disseisine ou la quiteclame ne put valer si noun en mayn de deuaunt [*sic*].¹

Mallor.² Ele ne purra mye si ele ne purra auer a la value si ele perdesit.

Scrop Iustice. Qei recouerait ele qant lestat le baroun fut esteynt.

Herle. Si ele recouerait vers nous et nous fussoms vers ly par voy

¹ *Quere* a slip for tenant.

² *Quere* a slip for Maln.

in respect of the husband's estate than his heir would be ; but if his heir were to claim these tenements against us we should rebut him from his action by our recovery of an older estate ; and therefore etc.

On another day—

Denham made the same answer as before. Since the claimant is claiming in right of her husband's estate, which estate was never annulled nor was disseisin found etc., [we ask] judgment.

Scrope. Inasmuch as the tenant [in the earlier action] made default and would not answer to the action, it would appear that the action was sufficiently tried.

SCROPE J. Judgment was given because of the default, and consequently the merits were not tried and disseisin not found. The wife offereth to aver the estate of her husband, and to that you must answer.

Herle. We hold the land in virtue of our recovery of an older right than that in virtue of which the wife is claiming. If, then, she recovered against us in the face of our recovery of the same right, our right of action against her would be saved to us, and so the law would both oust us of our right and would give us an action to recover the same right, which would be an incongruity.

Passeley. To whom we give an action, to him also we give an exception. And since if she were in seisin we should oust her by an action, therefore by an exception etc.

Denham. If my father disseise me and continue his estate so obtained until his death, and you enter after his death, I shall recover by the assize of mortdancestor ; and yet the same law would give you an action against me in virtue of your older right ; and so there is naught incongruous in your losing by this writ and recovering by another.

Herle. There is a simple explanation of that. It is that the wife may have her warranty. If she were to lose no voucher would be saved to her.

SCROPE J. She will pray aid of the husband's heir, and thereby you will be able to get your right tried ; but if she were out of seisin she could neither vouch nor pray aid, and it may be that one of the defendant's ancestors released and quitclaimed after the disseisin, and such a quitclaim would be of no use except in the hand of a tenant.¹

Malberthorpe.¹ If she were to lose [this action], she would be able to do naught unless she were able to get to the value [from a vouchee to warranty].

SCROPE J. What could she recover if her husband's estate were extinguished ?

Herle. If she were to recover against us and we brought our action

¹ But see the text.

de accioun de la [dis]seisine fet a nostre auncestre ele auera bon recoueryr [*sic*] qe il ne ly disseisi point et issi trier nostre dreyt et de pus qe ele en sa tenaunce nostre dreyt purra trier par ley il semble qe lauerement qe nous tendoms en triant nostre dreyt en nostre tenance deit ele receyure.

Toud. La ley est plus fauorable a mayntenir en sa tenance qe de oster ly et ly chacer a sa accioun et de pus qe ele put trier nostre dreyt par auerement qe nous tendoms en nostre tenance auxi auant com en sa tenance demeyne il semble qe pur fauor de nostre tenance ele deit nostre auerement receyure. Et dautre part ou ley ne chet pas sur certeyn com sur statut ele chet sur equite mes greyniour equite serreit qe mon dreyt seit trie en ma tenaunce qe ieo fuisse oste de ma tenaunce et chace a trier mesme le dreyt en autrie tenaunce par voy de accioun sur quele equite se foundereient touz qe foundereient les estatuz en cas ou homme ad recouery vers le baroun tenementz etc. qil ne deit estre oste de soun dreyt seit trie en sa tenaunce.

Herle. Oppinioun de ascune gent est en ceo cas qe sil recouerist la reuersioun serreit al heyr le baroun et issint recoucreit ele fee et dreyt en autrie persone sanz trier nostre dreyt ou il mesme ne le purra recouerer sanz trier nostre dreyt primerment.

Berr. Le fraune tenement resort touz iours au lu ou le dreyt est.

Denom. Vous auez conu qe Iohan nostre baroun aliena a Wauter de Bek et a Isabel sa femme et issint auez conu soun fraune tenement tel qe dower nous putreit et vous ne poez dire qe soun estat seit defet par le recoueryr qe vous alleggez ore en autre maner demaundoms iugement de vostre conissance et prioms seisine de terre.

V.¹

Dower.

Vne femme porta bref de dower vers Iohan de H. et demaunda la teree partie etc.

Herle. Ele ne deit dower auer car altre foiz portames nous nostre bref dentre foundu sur la nouele disseisine vers Iohan Flemmingge vnkle vostre baroun en le quel il nauoit entre si noun pur la disseisine qe Iohan le fuitz Matheu fist a nostre ael qy heir nous sumes par quel bref nous recouerames et demaundoms iugement depus qe nous auoms

¹ Text of (V) from E.

against her for the disseisin done to our ancestor she would have a good answer [by saying] that [her husband's ancestor] did not disseise him and so would be able to try our right ; and since she, if she were tenant, would be able by law to try our right, it seemeth that she ought to accept the averment which we offer, so that we, while we are tenant, may be able to try our right.

Toudeby. The law is more inclined to uphold a tenant in his tenancy than to eject him and to drive him to his action [to recover] ; and since she can try our right during our tenancy under the averment which we offer just as well as she could during her own tenancy, it seemeth that since we are now actually in tenancy she ought to accept the averment. And further, where definite law, such as a statute, doth not apply, then equity must apply, and the greater equity would be that my right should be tried during my tenancy than that I should be ejected from my tenancy and forced to try the same right by way of action during the tenancy of another ; and it is upon this principle of equity, that in the case where one hath recovered from the husband tenements etc. he ought not to be ejected, but his right should be tried while he is tenant, that all who made the statutes based them.

Herle. It is held by some that if the wife recovered in these circumstances the reversion would be to the husband's heir ; so here the claimant would recover the fee and right through another person without our right being tried, where the heir himself could not recover without first trying our right.

BEREFORD C.J. The freehold resorteth ever there where the right is.

Denham. You have acknowledged that John, our husband, alienated to Walter of Bek and to Isabel, his wife, and you have thereby acknowledged that he had a freehold so that he could dower us, and you cannot say that his estate was defeated by the recovery which you now allege or in any other way. We ask judgment of your acknowledgment and pray seisin of the land.

V.

Dower.

A woman brought a writ of dower against John of H. and claimed the third part etc.

Herle. She ought not to have dower, for at other time we brought our writ of entry founded upon novel disseisin against John Fleming, the uncle of your husband, [laying that] he had no entry into the tenements save after the disseisin which John, the son of Matthew, did to our ancestor, whose heir we are ; by which writ we recovered,

recouery ceux tenementz de dreyt plus haut qe ne fu lestat vostre baroun par quel recouerer chescun estat en le mene temps est esteynt iugement si ele peut dower demaunder.

Denum. Par quel iugement.

Tou. Par iugement qe se fist sur defaute apres defaute.

Denum. Depus qe vous alleggez iugement qe se fist sur defaute le quel iugement ne defet nuly estat pus le recouerer ne a deuaunt et nomement iugement fet vers estraunge persone a quel iugement nostre baroun ne fu partie iugement et nous prioms seisine de terre.

Herle. Conisez dunke le iugement.

Trewenion. Nest pas mester a conustre le iugement qe ceo poet estre od ma account qe ieo pos qe nostre baroun aliena a vn tenaunt le quel vst este disseisi et qe cele terre vst deuenue en diuers meyns par disseisine et le primer disseisi vst recoueri par bref dentre vnkor nous recoueryoms dower nent aresteaunt qe allegge serra qe le tenaunt vers qy il vst recouery par dreyt esne le quel dreyt ne fu pas trie auxi par de sa.

Malb. Si la femme recouerist ore cel dower del estat son baroun ceo serreit de affermer dreit en la persone le heir le baroun et de anentir le dreit qe nous auoms par my le recouerer daccioun esne Item si le heir fut issi mesme nous luy ostroms par my le recouerer et per consequens la femme qe demaunde del estat son baroun com del dreit le heir.

Den. Il nensyut pas vous ostrez le heir ergo la femme qe le heir demandreyt de altere estat qe ne freit la femme par quey la femme etc Item la feme ne poet pleder plus haut qe a lestat son baroun et si ele vousist dire qil ne fut pas disseisi ele ne serra pas resceu qe nous ne sumes pas en cas de statut a trier lestat le tenaunt qe le bref ne fu pas porte vers le baroun et demaundoms iugement.

VI.¹

Dowere.

Iohane qe fut la feme Mahieu le fiz Pieres porta son bref de dower vers Iohan halfknilt et demaunda la terce partie de la moite du maner de II. od les apurtenaunces.

¹ Text of (VI) from II.

and we ask judgment whether the claimant can have dower, since we have recovered these tenements by an older right than your husband had in them, by which recovery all mesne estates were extinguished.

Denham. By what judgment ?

Toudeby. By a judgment that was given upon default after default.

Denham. Seeing that you allege a judgment that was given upon default, which judgment doth not defeat any estate either after or before the recovery, and especially when it is a judgment given against a stranger to the action, and to that judgment our husband was not party, we pray seisin of the land.

Herle. Admit the judgment, then.

Trevanion. It is not incumbent upon us to admit the judgment, for it may be quite consistent with my right of action ; for I put the case that our husband alienated to a tenant who had been disseised, and that this land passed through divers hands by disseisin, and that the first who was disseised recovered by a writ of entry. We should still recover dower, in spite of any allegation that the tenant from whom he recovered [held it] by an older right, which right had not been tried. So here.

Malberthorpe. If the wife were now to recover this dower in virtue of her husband's estate, [such recovery] would affirm a right in the person of the husband's heir and defeat the right which we have by the recovery in the earlier action. Further, if the heir himself were here, we could bar him by virtue of the recovery ; and, consequently, [we can bar] the wife who is claiming of her husband's estate as of the heir's right.

Denham. It doth not follow that you can bar the wife because you could eject the heir ; for the heir would claim by other title than the wife doth ; therefore the wife etc. Further, the wife cannot plead any estate earlier than her husband's ; and, if she wanted to say that the defendant's ancestor was not disseised, she would not be received to try the estate of the tenant, for we do not come within the provisions of the statute,¹ for the writ was not brought against the husband ; and we ask judgment.

VI.

Dower.

Joan that was wife of Matthew the son of Piers brought her writ of dower against John Halfknight and claimed the third part of the moiety of the manor of H. with the appurtenances.

¹ Statute of Westminster II. cap. iv.

Caunt. Sire la ou ele demaunde la terce partie de la moite du maner de H. nous vous dioms qe quant a la terce partie de la terce partie de la moite son baron fut unkes seisi qy [sic] dower la poait quant al remenaunt nous vous dioms qe el ne deit dower auer kar nous recouerimes ceus tenementz en cest court par iugement de eyne estate qe lestate son baron par qey nentendoms pas qe ele deit dower auoire.

Denom. Par quel iugement.

Toudeby. Nous vous dioms qe par iugement de eyzne dreyt qe lestate le baron ceo sffit assez a esteindre lestate le baron et par consequent a barrer la de dower.

Berr. Il couent qe vous le diez par quel iugement ou par default ou par final iugement.

Malb. Sire nous vous dioms qe nous portames vn bref dentre sur la disseisine vers Walter Gold et Alice sa feme de tenementz en les quels meymes ceus Walter et Alice nauoynt entre si noun puy la disseisine qe Piers Mahew aumcestre le baron de ceo enfit a Iohan fleming chosin le auantdit Iohan et recouerimes ceus tenementz par default par vertue de dreyt qe en nous fut de eyne tens qe lestate son baron demaundoms iugement si ele deine dower auer.

Denom. La ou vous ditez qe vous recoueristes de eyne dreyt ceo ne poez dire qar le iugement sei fit sur la defaute par quel iugement le dreyt nest pas trie qar home poet recouerer par defaut ou home nad mie dreyt par qay tiels iugements sur defautez ne defount mie estate en le mene tens qar si le dreyt eely qe recoueri ne fut troue en le cas ou nous sumes ore si poet vn autre auer meuth dreyt dount moy semble qe tiels iugements ou dreyt ne sei proue put mie estate del mene tens puy defayre.

Malb. Nous sumes prest a moustrer nostre dreyt si la court le voile.

Denom. Nous ne sumes mie en cas de statut pur ceo qe le recouerer ne sei fit nient countre nostre baron mes deners vn estraunge.

Toudeby. On couient qe vous seez eide a la comune ley ou a le statut noun pas al statut ceo ditez vous dunk couient qe a la comune ley et a la comune ley noun pas pur ceo qe femes furunt forclos de dower ou iugement se fit par default ou en nule autre maner.

Cambridge. Sir, whereas she is claiming the third part of the moiety of the manor of H., we tell you as to a third part of the third part of the moiety, that her husband was never seised of it so that he could dower her. As to the residue, we tell you that she is not entitled to have dower of it because we recovered those tenements in this Court by a judgment that we had an earlier estate than the estate of her husband ; and therefore we do not see how she is entitled to dower.

Denham. By what judgment ?

Toudeby. We tell you that it was by a judgment that we had a right older than the husband's estate. That is quite sufficient to extinguish the husband's estate, and, consequently, to bar the wife of dower.

BEREFORD C.J. You must say by what judgment ; whether it was a judgment given by default or a final judgment.

Malberthorpe. Sir, we tell you that we brought a writ of entry upon disseisin against Walter Gold and Alice, his wife, of tenements in which these same Walter and Alice had no entry save after the disseisin which Piers, ancestor of Matthew the husband, did thereof to John Fleming, cousin of the aforesaid John [the present defendant], and we recovered these tenements by default in virtue of the right which was in us from a time further back than the estate of the claimant's husband. Judgment whether she is entitled to have dower.

Denham. Whereas you say that you recovered by an earlier right, you cannot say that, for the judgment turned upon the default, by which judgment the right is not tried ; for a man that hath no right at all may recover by default, and therefore such judgments by default do not defeat estates acquired in the mean time ; for if the right of him who recovered was not so established that it would hold good in the circumstances of the present case, some other might have a better right ; and therefore it seemeth to me that these judgments, where the right is not actually proven, cannot defeat an estate acquired in the mean time.

Malberthorpe. We are ready to show our right if the Court wish it.

Denham. We are not in the circumstances set out in the statute,¹ for the recovery was not gotten against our husband, but against a stranger.

Toudeby. You must get help either from the common law or from statute. You will not get it, by your own showing, from the statute. You must get it, then, from the common law. But you cannot get it from the common law, because wives were barred of dower in the case where judgment was given by default, and in no other way.

¹ Statute of Westminster II. cap. iv.

Denom. Vous ditez uerite ou le recouerer sei fit encountre le baron ore sei fit le recouerer uers vn estraunge persone par qay il moy suffit de auerrier qe moun baron fut seisi en son demeyn com de fee issi qe dower moy poait.

Hertilp. Si ele recouersit dower ore ceo serreit duresce de ley qar ou le tenaunt ad dreyt et uoet mousterer son dreyt qe il prent de eyne tens qe lestate son baron si recouerait ele et ceo recouerer prouerait lestate le baron bone issi qe la reuersioun par la reson del recouerer del estate noun pas esteynt remeyndra al heyr le baron.

Scrope Iustice. Nanil la reuersioun serra a cely hors de qy maynes le dower fut recouere et pur ceo qe le fee et le dreyt del entier demorrount en sa persone mesqe ele ait le fraunk tenement pur le tens apres quel tens ceste tierce partie sei reioynt a les deux parties et al fee et le dreyt de ceste terce partie et relie a son primer estate dount il vynt.

Hertilp. Si la feme ore recouersit et nous portames bref uers la feme et ele vouchat a garauntie le heyr et il perdesit ele nauerait nul value si la durriez vous accioun ou si le recouerer sei face la possessioun ne poet pas estre mayntenu.

Scrope Iustice. Nest mie meruayle lestat pur qay nunkes ne fut nunkor defet par qay eynz qe vous le eez defete vous ne la poez mie barrer de accioun et si vous le defacez par bref countre la feme qe vous porterez countre la feme nest mie meruayle qe ele recouera mie value pur ceo qe le estate et le dreyt par qay ele demaunde dower est defete par le eynze dreyt qe est troue auxi com vous veez si le baron seit seisi de iij. caruez de terre la feme dowe de la vne si bref seit porte countre la feme et ele perde ele auera la terce partie de deux caruez et noun pas la value et cest la resoun pur ceo qe ele auera forsqe la tierce partie des tenementz dount le baron fut seisi en son demeyn com de fee qe le estate de demayne et fee est defet par le eyne dreyt qe est troue et ele auera la tierce partie de deux caruez de terre dount lestate le baron unkor demoert clere et estable et nient defete.

Malb. Statut fut ordeynt pur ceste duresce qe la ou tenementz furent perduz par default souent aynt qe per consensum des parties et conueygne ou cely qe recouerist auoit nul dreyt iugement sei

Denham. What you say is true when the recovery is gotten against the husband ; but here the recovery was gotten against a stranger, and, therefore, it is enough for me to aver that my husband was seised in his demesne as of fee so that he could dower me.

Hartlepool. If the claimant were now to recover dower it would be a hardship of law, for the tenant hath a right and he wisheth to prove his right, which accrued to him at an earlier date than that of the husband's estate. If the wife should recover, and, by her recovery, prove that the husband's estate was sound, then, by virtue of that recovery, the reversion of the estate, not being extinguished, will remain to the husband's heir.

SCROPE J. No. The reversion will be to him from whose hands the dower is recovered, because the fee and the right of the whole will remain in his person, though the wife have the freehold for the time ; after which time this third part will be re-united to the two other parts and to the fee and the right of this same third part, and restored to its former condition, which it departed from [for the time].

Hartlepool. If the wife were to recover now, and we brought a writ against her and she vouched the heir to warranty and he lost, she would not get [other land] to the value. If you allow her a right of action and if the recovery be gotten [by her], she cannot maintain her possession.

SCROPE J. There is no difficulty there. The estate was never annulled, because it never existed ; and, even if you had annulled it, you would not thereby bar her from her action. And if you annul it through a writ against the wife, which you may bring against the wife, there is naught strange in the fact that she would not recover to the value, for the estate and the right in virtue of which she claimeth dower is defeated by the older right which has been found [by the inquest], as you admit. Further, as you see, if the husband be seised of three carucates of land and the wife be dowered with one of them, and if a writ be brought against the wife and she lose, she will have the third part of two carucates and not to the value [of the one carucate], and the reason of this is that she will have the third part of those tenements only of which her husband was seised in his demesne as of fee, and his estate in demesne and fee [in the one carucate] is defeated by the earlier right proved, and so the wife will have the third part of the two carucates in which the husband's estate still remaineth clear and undisturbed and undefeated.

Malberthorpe. The statute was provided to remedy the hardship of tenements being lost by default, which oft-times came about through the consent and connivance of the parties, so that he who recovered

fit sur la default et furunt dames oghtez de lur dowers auxi anaunt com le dreyt out este trie et final iugement rendu par qay fut ordeyne qe le tenaunt moustrat son dreyt et del hure sire qe nous sumes prest a moustrer nostre dreyt quel dreyt proue la reboterait de accioun demaundoms iugement si ele ne puyt nostre dreyt defayre et lestate son baron affermer si dower ele deüve auoyr.

Denum. Nous ne sumes mie en cas de statut ne apent pas a nous a pleder autri dreyt mes de auer qe nostre baron fut seisi qy dower nous poait.

Malb. Ou deux meschefs ad en ley la meyndre duresce fet eslier meyndre duresce il est qe ele plede en defessaunt nostre dreyt si ele poet qe il ne sait oghte de sa possessioun et sait mis a sa accioun ou il ad bone defens. .

Toudeby. Ou home ad bone excepcioun si il seit eynz home ne mettra pas a accioun pur ceo qe ley sey tayle et est plus fauorable ou tenaunt ad dreyt de eyder luy par veie de excepcioun qe a toller luy sa possessioun et a mettre ly a sa accioun.

Denum. Si ieo vous deforce et ieo continue ma disseisine ceo vous ne oghte pas qe vous ne poez recouer de la disseisine fete primerment et nient countre esteaunt la disseysine fete deuaunt qe il ne recouerat luy mettra a son purchace du primer tort auxi si ieo disseise vostre pier et aliene et le feffe morge seisi et vous apres son deces entrez lenfaunt desreynera les tenementz hors de vostre mayne et vous mettra a vostre accioun ou vous poiez auer defens pur le primer eyne dreyt.

Hertilp. Nest mie meruayle ceo est par la resoun qe il poet voweher et si il fut oghte de accioun il perdroit son voweher.

Toudeby. Graunt duresce ensut si ceste feme recouera dower qar ieo moy puise abater en le heritage cely apres sa mort et alier a vn altre et il al tierce et issint pount les tenementz uenyr en xx maynes et le drayn poet perdre par default qar home ne li poet mie fayre uenir en court si il ne veet et issi tuttez les dames recouerunt dower qe est graunt duresce.

Denom. Nest pas duresce pur ceo qe lay nest mie lencountre pur ceo qe lestate le baron ne poet estre defet ci la qe la feme ait

had no right, judgment being given on the default; and ladies were deprived of their dower as effectively as though the actual right had been tried and final judgment given. It was, therefore, provided that the tenant should show his right; and since, Sir, we are ready to show our right, the proof of which right will rebut the claimant from her action, we ask judgment whether she is entitled to have dower unless she can defeat our right and prove her husband's estate.

Denham. We do not come within the circumstances contemplated by the statute, for it is not our business to plead somebody else's right, but to aver that our husband was so seised that he could dower us.

Malberthorpe. Where there is a choice between two hardships of law, the lesser is to be chosen. It is a less hardship that the claimant should be made to plead in defeasance of our right, if she can, than that the tenant should be ejected from possession and be forced to bring his action [to recover it] when he hath a good defence [here].

Toudeby. Where one that is in possession hath a good challenge [to the writ] he will not be forced to defend the action, for the law adapteth itself and would rather help a rightful tenant by allowing his challenge than deprive him of his possession and force him to bring his action [to recover it].

Denham. If I discontinue you and continue my disseisin, that doth not oust you so that you cannot recover by reason of the original disseisin; but yet the disseisin done [by the disseisor] before [the disseisee] recovered will give [the disseisor] a title by purchase through the original tort [against anyone who should eject him]. So, if I disseise your father and alienate, and the feoffee die seised, and after his death you enter, his son will recover the tenements out of your hand, and will put you to your action, in which you will be able to avail yourself of your original older right.

Hartlepool. There is nothing strange about that. The reason is that he can vouch, and if he were ousted of his right of action he would lose his voucher.

Toudeby. Great hardship will follow if this woman recover dower. For I may abate myself into a man's heritage after his death and alienate to someone else, and he to a third, and in like manner the tenements may pass through a score hands, and the last in possession may lose by default, for no one can make him come into Court if he will not, and so all the ladies [of all the successive possessors] will recover dower, which would be a great hardship.

Denham. It would be no hardship, for the law is not contrary thereto, because the husband's estate cannot be defeated before the wife

recoueri et qe lautre seit mis a sa accioun et dunk par le trier de son dreyt puyz esteyndre lestate le baron.

Hertilp. Le bref fut porte vers Walter Bek etc. en les quels cely Walter nauoit entre si noun puyz la disseisine fet a nostre auncestre par la amite le baron sur quel purchace nostre recouerer sei fit ore lestate qe le baron auoit eeo fut par descent de cely qy disseisit dunk par nostre purchace auoms taunt recoueri ou le baron nul altre estate auoit si noun par descent apres la mort le disseisor et nous veoms en autre cas ou homue recouere sauf al perdaunt sa accioun si nule ait ou il est estraunge al primer recouerer par qay nous semble qe a mult plus forte ou nous voloms auerer nostre dreyt nous le mayntendrons plus tost qe nostre possessioun nous serra tolle.

Denum. Nous ne purroms mie pleder autri dreyt mes nous uoloms auerer qe nostre baron fut seisi qy dower nous poait.

Toudeby chace dit qe le plee pendet [*sic*] deuaunt sire raulf de Heyng-ham entre Walter Bek et Iohan issi qe pais sei ioint entre eus ou troue fut qe pieres le fiz Maheu disseisi Iohan nostre auncestre apres lenqueste passe la parole par askun encheson fut remoue deuaunt le roy et puyz remaunde et qant ils auoint iour le tenaunt fit defaute issi qe il perdit et nentendoms pas del hure qe la enqueste passa ou la disseisiue fut troue et le dreyt trie et uostre baron nauoit riens si noun par descent de cely qy disseisit del hure qe le tort fut troue les estatez en le mene tens furunt defetez.

Denom. Mes qe lenqueste passa et le iugement ne sei fit nient sur le ueredit qe cest enqueste luy serra en eide et de puis qe le iugement sei fit par defaute apres defaute semble a nous qe nous suffit de auerer lestat nostre baron.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 220; Hampshire.

Alianora que fuit vxor Mathei filii Iohannis per Matheum de Buketone attornatum suum petit uersus Iohannem Halfknyght quem Stephanus Brightmerstone vocauit ad warrantiam et qui ei warrantizauit terciam partem medietatis manerii de Hakenestone cum pertinenciis vt dotem etc.

Et Iohanues venit Et quo ad predictam terciam partem predictae tercie partis dicit quod predicta Alianora non debet inde dotem habere Quia dicit quod predictus Matheus quondam vir etc. die quo ipsam dispousauit nec

hath recovered dower, and he [from whom she hath recovered it] be put to his action, and then by the trial of his right he can defeat the husband's estate.

Hartlepool. The writ was brought against Walter Bek¹ etc. [setting out that] Walter had no entry in the tenements claimed save by the disseisin done to our ancestor by the aunt of the [present claimant's] husband, and we got our recovery by reason of a possession so acquired. Now the estate which the husband had was by descent from the disseisor. We, then, by virtue of our purchase had a recovery where the husband had no estate save by descent after the death of the disseisor; and we have seen another case where the plaintiff, though he was no party to the first recovery, recovered, the loser's right of action, supposing he had one, being saved to him; wherefore it seemeth to us that, *a fortiori*, where we are ready to aver our right we shall maintain it rather than that our possession shall be taken from us.

Denham. We cannot plead to the right of another, but we will aver that our husband was so seised that he could dower us.

Toudeby was forced to admit that the plea between Walter Bek and John was tried before Sir Ralph of Hengham, and that they went to a jury of the country by which it was found that Piers, the son of Matthew, disseised John, our ancestor. After the inquest, the hearing was, for cause shown, removed *coram Rege*, and then sent back; and when the parties had their day the tenant made default, so that he lost; and since the inquest passed by which disseisin was found, and the right was tried, and [since] your husband had naught except by descent from the disseisor, we think that the mesne estates are defeated, for the tortious act was found [by the inquest].

Denham. Though the inquest passed, yet the judgment was not given on the verdict, and though the defendant will be aided by that inquest, yet, since the judgment was given by default upon default, it seemeth to us that it is enough for us to aver the estate of our husband.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 220, Hampshire.

Eleanor that was wife of Matthew, son of John, by Matthew of Buckton, her attorney, claimeth against John Halfknight, whom Stephen Brighton vouched to warranty and who warranted him, a third part of the moiety of the manor of Hacklestone with the appurtenances as dower etc.

And John cometh, and as to the aforesaid third of the aforesaid third part, he saith that the aforesaid Eleanor ought not to have dower thereof; for he saith that the aforesaid Matthew, aforetime husband etc., neither on

¹ He is called Walter Gold earlier in the report

Note from the Record—continued.

vnequam postea fuit seisisus de tercia parte illa in dominico suo vt de feodo Ita quod ipsam inde dotare potuit Et de hoc ponit se super patriam Et Alianora similiter Et quo ad duas partes predictae tercie partis dicit similiter quod Alianora non debet inde dotem habere Quia dicit quod quidam Magister Iohannes Flemyng consanguineus predicti Iohannis Halfknyght cuius heres ipse est alias in Curia domini Edwardi Regis patris domini Regis nunc coram .S. de Ross et sociis suis Iusticiariis ipsius Regis in Comitatu Wiltescirie Itinerantibus tulit breue uersus quemdam Walterum de Bek et Iohannam uxorem eius de predictis duabus partibus In quas idem Walterus et Iohanna non habuerunt ingressum nisi post disseisinam quam Petrus filius Mathei inde fecit Iohanni Flemyng patri ipsius Magistri Iohannis cuius heres etc. post primam etc. ad quod breue predicti Walterus et Iohanna placitauerunt cum predicto Magistro Iohanne allegando quod predictus Petrus non disseisiuit predictum Iohannem Flemyng patrem etc. sicut predictus Magister Iohannes dixit et hinc inde se posuerunt ibidem in Iuratam patrie per quam compertum fuit coram eisdem Iusticiariis Itinerantibus quod predictus Petrus disseisiuit predictum Iohannem Flemyng de predictis duabus partibus post terminum etc. Ita quod ob certas decausas pro domino Rege ibidem allegatas super veredicto predictae Iurate partes ille adiornate fuerunt coram Radulpho de Hengham tunc Iusticiario ad placita Regis de audiendo iudicio suo etc. Qui quidem Walterus et Iohanna postmodo coram domino Rege amiserunt per defaltam etc. vnde cum status quem predictus Matheus quondam vir etc. habuit in eisdem tenementis per decensum hereditarium de predicto Petro auunculo ipsius Mathei cuius heres etc. adnullatus fuit virtute veredicti predicti petit iudicium si actio dotis ei competere possit de seisina predicti Mathei in hac parte etc.

Et Alianora dicit quod ipsa parata est verificare sicut Curia considerauerit quod predictus Matheus quondam vir etc. postquam ipsam disposauit fuit seisisus de predictis duabus partibus in dominico suo Ita quod ipsam inde dotare potuit Et ex quo predictus Iohannes non allegat quod predictus Matheus vnequam predicta tenementa amisit per iudicium seu tenementa illa prefato Magistro Iohanni reddidit in Curia Regis etc. per quod sequitur quod ipsa non est in casu de quo fit mencio in statuto etc. de dote non recuperanda etc. petit iudicium etc. Dies datus est eis de audiendo iudicio suo hic a die Sancti Hillarii in xv. dies prece parcium saluis partibus rationibus etc. Et preceptum est vicecomiti quod venire faciat hic ad prefatum terminum xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc.

Note from the Record—continued.

the day on which he espoused her nor at any time afterwards was seised of that third part in his demesne as of fee so that he could dower her thereof. And of this he putteth himself upon the country. And Eleanor doth the like. And as to the two other thirds of the aforesaid third part he saith also that Eleanor is not entitled to have dower thereof; for he saith that a certain Master John Fleming, cousin of the aforesaid John Halfknight, whose heir John Halfknight is, did at other time in the Court of the lord King Edward, father of the lord King that now is, before S. of Ross and his companions, Justices in Eyre of the same King in the county of Wiltshire¹ bring a writ against a certain Walter of Bek and Joan, his wife, of the aforesaid two parts, in which [he said] Walter and Joan had no entry save after the disseisin which Piers, son of Matthew, did thereof to John Fleming, father of that same Master John, whose heir he is etc. after the first etc.; to which writ the aforesaid Walter and Joan pleaded with the aforesaid Master John, alleging that the aforesaid Piers did not disseise the aforesaid John Fleming, father etc., as the aforesaid Master John did say; and they put themselves thereof in that same place upon a jury of the country, by which it was found before the same Justices in Eyre that the aforesaid Piers disseised the aforesaid John Fleming of the aforesaid two parts after the term etc.; and thereupon, by reason of certain objections there raised on behalf of the lord King upon the verdict of the aforesaid Jury, the said parties were adjourned before Ralph of Hengham, then Justice of the King's Pleas, to hear their judgment etc. The said Walter and Joan afterwards before the lord King lost by default etc. Since, thereby, the estate which the aforesaid Matthew, aforetime husband etc., had in the same tenements by hereditary descent from the aforesaid Piers, uncle of the same Matthew, whose heir etc., was annulled by virtue of the aforesaid verdict, he asketh judgment whether any right of action for dower can accrue to Eleanor of the seisin of the aforesaid Matthew in these circumstances etc.

And Eleanor saith that she is ready to aver, as the Court shall allow, that the aforesaid Matthew, aforetime husband etc., was, after he espoused her, seised of the aforesaid two parts in demesne so that he could dower her thereof. And because the aforesaid John doth not allege that the aforesaid Matthew ever lost the aforesaid tenements by judgment or surrendered those tenements to the aforesaid Master John in the Court of the King etc., and therefore she, Eleanor, doth not come within the conditions mentioned in the statute² etc., as barring the recovery of dower, she asketh judgment etc. A day is given them to hear their judgment here on the quindene of St. Hilary *prece parciū*, their arguments being saved to the parties etc. And the Sheriff is ordered to make come here in the aforesaid term day twelve etc., by whom etc., and who neither etc., to make recognition etc., because both etc.

¹ Hacklestone is in Wiltshire.² Statute of Westminster II. cap. iv.

19. ANON.¹I.²

Dower ou le bref feut abatu pur ceo qe qil feut porte vers tenaunt a terme des aunz.

En vn bref de dower—

Scrop. Nous tenoms les tenementz a terme des aunz du lees vn B. et de tiel estat luy vouchoms a garauntie qe nous ne voloms mye pleder en abatement de bref pur la sentence si la court pust seofrer qe cesti bref serreit meyntenu de vers autre qe de vers tenaunt de fraunctenement.

Scrop. Ceo est vn bref de dower qe est maintenu en son cas de vers gardeyn qe nad qe chatel et ceo en fauour de dower auxi de ceste part.

Berr. La est il nome gardeyn del heir et pur ceo est le bref bon qil ad estat le heir en qi le fraunctenement est.

Et puyz feut le bref abatu.

II.³

Dowere vers tenaunt a terme des aunz non potuit vocare warrantum et breue cassatur.

Bref de dower fut porte vers vn tenaunt a terme des aunz.

Scrop. Nous tenoms la terre a terme dez aunz etc. du lees B. et ly vouche [*sic*] a garrauntie si la court le poet⁴ souffrir.

Ingc. Si W. qe est heyr le baroun garrauntissast et venist en court et perdesit la femme reconerast⁵ vers ly sil vst etc. fraunktenement la ou il ne garraunti mesqe terme qe⁶ serreit encountre ley.

Scrop. Gardeyn poct resoundre a vn bref de dowere.

Berr. ⁷Ceo est autre⁸ qe il respondera en noun⁹ le heir come gardeyn de la terre et del heyr etc.

Et la femme ne pout dedire qil nauoit forsqe terme par qei le bref abatist etc.

¹ Reported by B, C, M and X. This is Fitzherbert, *Briefs*, case 809, f. 185.

² Text of (I) from B.

³ Text of (II) from M collated with X.

⁴ plenit, X.

⁵ reconerissit, X.

⁶ Added from X.

⁷⁻⁸ cest altre, X.

⁹ dreit, X.

19. ANON.

I.

Dower; where the writ was abated because it was brought against a tenant for a term of years.

In a writ of dower—

Scrope. We hold the tenements for a term of years by the lease of one B., and we vouch him to warranty of such an estate, for we do not wish to plead for judgment in abatement of the writ if the Court can allow this writ to be maintained against one that is not a tenant of freehold.

SCROPE J. This is a writ of dower which is maintainable in the circumstances against a guardian that hath wardship of the chattels only, because [the law] is favourable to dower; so here [it is maintainable].

BEREFORD C.J. Here he is named as guardian of the heir, and so the writ is good, because he hath the estate of the heir in whom the freehold lieth.

But afterwards the writ was abated.

II.

Writ of dower against a tenant for a term of years. He could not vouch to warranty, and the writ was quashed.

A writ of dower was brought against a tenant for a term of years.

Scrope. We hold the land for a term of years etc. by the lease of B., and vouch him to warranty if the Court can allow it.

INGE J. If W. who is the husband's heir warranted and came into Court and lost, the wife would recover against him if he had etc. a freehold, although he had warranted a term only, which would be against the law.

Scrope. A guardian can answer to a writ of dower.

BEREFORD C.J. That is another matter, for he will answer in the name of the heir as guardian of the land and of the heir etc.

And the wife could not deny that the defendant had only a term, and therefore the writ was abated etc.

III.¹

Nota la dame de Bardolf porta bref de dower vers I. de Merkenfelde tenant a terme de aunz qe de soun estat voleit auer vouche ou Bereford abaty le bref pur qe il ne fut pas tenant de si haut estat com la femme demande par soun bref.

20. DE LISLE *v.* SAY.²I.³

Replegiare ou le defendant auowa pur homage. Le pleintif dit qe le Roy fust seisi de son homage et fust chace a moustre coment le Roy fust seisi de dreit.

⁴En vn replegiare la vowrie fust fete pur homage le defendant⁵ [*sic*] dist qe apres la mort son auncestre le Roi seisi la garde et nous siwimes le diem clausit extremum ou troue fust qe les tenementz furunt tenus du Roi par verdit denqueste et qe nous fumes plus prochain heir par qei nous feimes homage a Roi et hors de sa seisine il nous liuera la seisine et issi est le Roi seisi de nostre homage iugement si vous pur⁶ homage dount le Roi est seisi puyssiet auowerie faire.

Caunt. Nous auoms fait⁷ ceste auowerie de nostre seisine demene par my la mayn vn tiel vostre auncestre qi heir vous estes et auoms dit qe vous tenet de nous par teux seruices a quei vous respoundez nient iugement.

Scrop Justice. La ou il vous fait son tenaunt et lie la seisine par my launcestre et vous luy voilletz estraunger par seisine de Roi il vous couent moustre coment le Roi est seisi de dreit.

Scrop. Le Roi Henri ael etc. seisi feut de ceux tenementz et⁸ hors de sa seisine les dona a vn gerard a tener a luy et a ces heirs du Roi et de ces heirs et fist la descende de tenementz⁹ tanqe a cesti¹⁰ et lia la seisine de Roi par mayn de chescun tenaunt et si¹¹ est le Roi seisi de nostre homage iugement si sur nous pur homage puyssiet auowerie faire.

¹ Text of (III) from *C.* ² Reported by *B.*, *C.*, *H.*, *M.*, and *X.* Names of the parties from the Plea Roll. ³ Text of (I) from *B.* collated with *M.* and *X.* The headnote in *X.* is: Nota. Replegiare ou lauowerie fut fait pur homage le tenaunt dit qe le Roi fut seisi de son homage et moustra etc. ⁴⁻⁵ Nota qe vn replegiare pur homage fet le defendant, *M.*, *X.* ⁶ *M.* and *X.* *ad* nul. ⁷ *M.* omits. ⁸ qe, *M.*, *X.* ⁹ From *M.* and *X.*; toux, *B.* ¹⁰⁻¹¹ et nous vous dioms qe le Roi ad este seisi par my la mayne chescun tenaunt etc. et issi, *M.*, *X.*

III.

Note that the lady of Bardolf brought a writ of dower against J. of Merkenfield, who held for a term of years and wanted to vouch to warranty of his estate, but BEREฟอร์ด C.J. abated the writ because J. had not so high an estate as that in respect of which the wife claimed in her writ.

20. DE LISLE *v.* SAY.

I.

Writ of replevin, where the defendant avowed for homage. The plaintiff said that the King was seised of his homage; and he was made to show how the King was rightfully seised.

In a writ of replevin the avowry was made for homage. The plaintiff¹ said that after the death of his ancestor the King seized the wardship, and we sued out a writ of *diem clausit extremum*, and by the verdict of the inquest it was found that the tenements were holden of the King and that we were the next heir. We therefore did homage to the King, who, out of his seisin, delivered seisin to us, and in that way the King is seised of our homage. Judgment whether you can avow for homage of which the King is seised.

Cambridge. We have made this avowry of our own seisin by the hand of such an one, your ancestor, whose heir you are; and we have said that you hold of us by such and such services, to which you answer naught. Judgment.

SCROPE J. Since the [defendant] maketh you his tenant and layeth his seisin by your ancestor, and you want to bar him by the fact of the King's seisin, you must show how the King is rightfully seised.

Scope. The King Harry, grandfather etc., was seised of these tenements, and out of his seisin granted them to one Gerard to hold to him and his heirs of the King and his heirs—and he showed how the tenements descended to this [plaintiff], and he laid the King's seisin by the hand of each [successive] tenant—and in that way the King is seised of our homage. Judgment whether you can make avowry upon us for homage.

¹ But see the text.

II.¹

Replegiare lauwerie fet sur le isseu.

Robert de Totenham porta soun replegiare vers Robert de Stanes et dit qe a tort etc. nomement .iij. bofes etc.

Scrop. La ou il dit qe nous prismes .iij. bofes etc. nous prymes .iiij. et ceo dioms nous pur retourne auer si retourne etc. et de ceus auowois la prise etc. par la resoun qe Robert de Westone et H. sa femme fuerunt seisi del Maner de E. com del dreyt H. et tyndrent le dit maner del honour de Boloyng par lez seruices de ij. fees de chivalier le quel Robert et H. graunterent et renderent le maner par fyn a Robert de Totenham et a E. sa femme et a lez heirz de lour .ij. cors engendrez a tenir de Robert et de H. et dez heirz H. par fealte et par lez seruices de vn clon de Gelofres par an fesant pur eux etc. a chef seignurage de fee lez seruices de ceux tenementz dez queus seruices Robert et H. fuerunt seisi cum del dreyt H. par my la mayn Robert de Totenham et E. com par mye etc. solom la fourme et apres la mort H. nous com cosyn et heyr H. sumes seisi par my lez maynes Robert de Totenham et E. com par my etc. la quele E. suruesquit Robert de Totenham et nous seisi par mye sa mayn etc. et pur relef de .ij. fees de chivalier apres la mort E. si auowoms la prise en le leu etc. sur mesme cesti Robert com sur soun verrey tenaunt et deynz soun fee etc.

Ingham. Auowerie sur nous ne poez fere care nous vous dioms qe E. morust en le homage le Roy apres qi mort mesme cesti Robert sewit le diem clausit extremum ou troue fut qe le maner fut tenu en chef du Roy et qe E. morust seisi et qil fut plus prochein heyr par qei il ne poeit seisine auer deuant qil fit homage au Roy et demaundoms iugement si sur nous qe sumes attorne del homage au Roy et soun tenant de mesmes lez tenementz pussez auowerie fere.

Scrop. Dites qe la fyn qe est de recorde a qei nous sumes priue dambe parties testmoigne qe vous estez nostre tenant par ceux seruices et demaundons iugement si par cel respouns de ceste auowerie nous pussez oster.

Ingham. Si vous de vostre teste demene auez attorne al Roy la ou vous purrez auer eide par la fyn a lenqueste prendre vous cel waynastez issi qe par vostre lachesse demesne le homage fut fet

¹ Text of (II) from C; but see the footnote on p. 118, below.

II.¹

Writ of replevin where avowry was made on the issue [of her on whose death it was alleged that a relief was due].

Robert of Tottenham brought his writ of replevin against Robert of Stanes and said that he wrongfully etc., to wit, three bullocks etc.

Scrope. Whereas he saith that we took three bullocks etc., we took four; and we say this that we may have return [of four] if return etc. And we avow the taking etc. of these by reason that Robert of Weston and H., his wife, were seised of the manor of E. as of the right of H., and held the said manor of the honour of Boulogne by the services of two knight's fees; the which Robert and H. granted and surrendered the manor by a fine to Robert of Tottenham and to E., his wife, and to the heirs of their two bodies gendered, to hold of Robert [of Weston] and of H. and of the heirs of H. by fealty and by the services of a clove every year, rendering for them etc. to the chief lords of the fee the services due from those tenements, of which services Robert and H. were seised, as of the right of H., by the hand of Robert of Tottenham and E. as by etc. according to the form; and, after the death of H., we, as cousin and heir of H., were seised by the hands of Robert of Tottenham and E. as by the etc. The said E. survived Robert of Tottenham and we were seised by her hand etc.; and for the relief due from two knight's fees upon the death of E. we avow the taking in the place etc. upon this same Robert as upon his very tenant and within his fee etc.

Ingham. You cannot make avowry upon us, for we tell you that E. died in the King's homage, and that upon her death this Robert sued out a writ of *diem clausit extremum*, under which it was found that the manor was held of the King in chief, and that E. died seised, and that Robert was the next heir, and therefore he could not have seisin before he had done homage to the King; and we ask judgment whether you can make avowry upon us who have attorned to the King for our homage and are his tenant of these same tenements.

Scrope. Seeing that the fine, which is of record, to which we are both privy, witnesseth that you are our tenant by these services, we ask judgment whether you can oust us from our avowry by that answer.

Ingham. You have, of your own caprice, attorned to the King when you might have aided yourself by the fine. At the taking of the inquest you ignored it, and so the homage was done through your

¹ See the footnote on p. 118 below.

par quei demaundons ingement si par cel homage qe vous auez fet de vostre tort demene nous pussez de ceste auowerie [oster].

Pass. Al prendre de lenqueste si nous eussions mys auant la fyn il nauaynt my power a trier le dount par taunt ne poez assigner lachece en nous.

Ingham. Quant le Roy fut entre etc. vous dussez auer aproche a ly et auer moustre la fyn en euydence a ly et a soun conseilhe qe vous fustez nostre tenant et ceo ne feistez my et issy fut ceo vostre lachesse par quei de vostre lachesce ne deuez auantage prendre pur nous oster de ceste auowerie.

III.¹

Replegiare.

Robert de Todenham porta son replegiare uers Robert de Scales et sei pleint ces auers atort estre prise en bromsted en vn certeyn leu qe homo apele gattingle (?).

Denom auowe la pris bone par la resoun qe Robert de Westone et Hawise sa feme furent seisis du maner de bromsted dount la lue ou la prise fut fete en est parcele a meyme le maner et tindrent du roy com del honur de bolunge sur quel maner fine sei leua en cest court entre Robert de Todneham pier cesti robert de T. et Eue sa femme pleygnaunz et Robert de Westone et Hawise sa feme dautre parte deforciaunz deuant sir Rauf de H. et ses compaynons etc. lan xviiij. du Roy qy mort est cest asauer qe R. de T. conoisait les tenementz contenuz en le bref estre le dreyt Hawise com ceux qe Robert et Hawise auoient de son doun pur quele reconoisaunce robert et Hawise grauntayent et rendirent meymes les tenementz a R. de T. et Eue sa feme a teuyr a eux et a les heyres de lur cors engendrez rendaunt a Hawise et a ses heyres vn clowe geloire par an et fesaunt pur ly et ses heyres a chefs seynures du fee les seruices dues des tenementz des queux seruices Hawise Chosin etc. fut sei si par mie la mayn robert et Eue com etc. de hawise resorti le fee et le demayn a Robert de Scales com a chosin et heyr fiz Iohan frere Thomas pier Hawise et pur relef arrere de vn entier fee de chivalier apres la mort Eue mier Robert qe ore sei pleynt si auowe il cest prise en le lue auaunt dit com en parcele des tenementz chargez des auaunt ditz seruices et deynz son fee.

Heng. Nous vous dioms qe Eue nostre mier ceux tenementz tynt

¹ Text of (III) from II; but see the footnote on p. 118 below.

own negligence. Wherefore we ask judgment whether you can oust us from this avowry by that homage which you have done through your own wrongful act.

Passeley. If we had tendered the fine at the taking of the inquest, the inquest would have had no power to try it; and therefore you cannot, for that, assign neglect in us.

Ingham. When the King entered you ought to have approached him and have shown the fine to him and to his Council as evidence that you were our tenant, and you did not do so, and that was neglect in you. Therefore you ought not to be enabled by your own neglect to oust us from this avowry.

III.

Replevin.

Robert of Toddenham brought his writ of replevin against Robert of Scales and complained that his beasts had been wrongfully taken in Brumstead in a certain place commonly called Gattinglee.

Denham avowed the seizure as good because Robert of Weston and Hawise, his wife, were seised of the manor of Brumstead, of which same manor the place where-in the seizure was made is parcel, and they held it of the King as of the honour of Boulogne: upon which manor a fine was levied in this Court before Sir Ralph of Hengham and his companions in the eighteenth year of the King that is dead between Robert of Toddenham, father of this Robert of Toddenham, and Eve, his wife, complainants, and Robert of Weston and Hawise, his wife, deforcients, of the other part, to the effect that Robert of Toddenham recognised the tenements named in the writ to be the right of Hawise, as those which Robert and Hawise had by his grant; in consideration of which recognition Robert and Hawise granted and surrendered the same tenements to Robert of Toddenham and Eve, his wife, to hold to them and to the heirs of their bodies gendered, rendering to Hawise and to her heirs a clove yearly, and rendering to the chief lords of the fee, for her and her heirs, the services due from the tenements; of which services Hawise, cousin etc., was seised by the hand of Robert and Eve as etc. From Hawise the fee and demesne resorted to Robert of Scales as cousin and heir, being the son of John, that was brother of Thomas the father of Hawise; and for a relief in arrear upon a whole knight's fee after the death of Eve, mother of Robert, the present plaintiff, he avoweth this seizure in the place aforesaid as in parcel of the tenements charged with the aforesaid services and within his fee.

Ingham. We tell you that Eve, our mother, held these tenements

de nostre seigneur le roy et al roy fit sa fealte pur meymes les tenementz et murust tenaunt le roy apres qy mort le eschetour entra et suimes diem elausit extremum ou troue fut qe ceste Eue tynt du roy et qe nous sumes heyr Eue et pur eeo qe nous fumes de pleygne age nous suimes de auoyr seisine et faymes nostre homage al roy et reseumes nostre terre et nentendoms pas del hure qe nous le tenaunt le roy et il seisi de nostre homage qe pur relef arere puyssiez auowerie faire.

Scrop. Vous avez entendu coment eeo fine qe nous meymes auaunt qe sei leua entre nos aunecestres de vne parte et uostre amite de autre parte 'la quele fine² tesmoygne qe les tenementz passaient hors de la seisine Robert et Hawise a tenyr de Hawise et de ses heyres par les seruiees auaunt d'iz la quele fine il ne poet dedire si de nostre releue nous deue estraungere pur taunt qe il dit qe il est del homage le roy.

Heng. Vn rauf de R. fut seisi du dit maner et le tynt du roy Henri et fit son homage pur le maner a mesme le roy son fiz en meym la manere tynt et fit son homage a meyme le roy et son fiz le tynt tut issint et le aliena a Robert de Todneham et Eue sa feme et as heyres Eue a tenyr des chefs seynourages du fee par qay Eue apres le deces Robert son baron fit sa fealte a nostre seigneur le roy et le eschetour seisi com nous deymes deuaunt et pur cest resoun faimes homage a nostre seynour le roy et reseumes nostre terre et demaundoms iugement del hure qe nostre seynour le roy est seisi de nostre homage en la manere qe nous auoms dit si pur relef arere auowerie puyssiez faire.

Berr. Il vous dit qe ceux tenementz furent tenuz de roy si ne poez nient estraungere le roy de son tenaunt.

Hengham. Vn rauf de roucestre fut seisi de ceux tenementz et les tynt du roy Iohan en chef de cely descendit le dreyt a Iohan com a fiz et heyr de Iohan descendit a Piers com a frere et heyr qy pur ceus tenementz fit son homage al roy Henri et de piers descendit le dreyt a Henri com a frere qy fit son homage al meym le roy et de Henri descendit le dreyt des tenementz a Rauf com a fiz et heyr le quel Rauf dona ceus tenementz a Hamond de Wond a tenyr des chefs seynourages du fee le quel Hamond regraunta ceus tenementz a rauf et Eue sa feme et a les heyres de son cors engendrez a tenyr de chefs etc. et si ils deuiaissent saunz heyre etc. qe les tenementz demorassent als dreiz heyres Eue pur touz iours rauf murust saunz heyre engendre de Eue par qay ele com ceste a qy estate de fee simple remainait

¹⁻² These words are superfluous.

of our lord the King, and did her fealty to the King for the same tenements, and died a tenant of the King; and after her death the escheator entered, and we sued the *diem clausit extremum*, by which it was found that this Eve held of the King and that we were Eve's heir; and because we were of full age we sued to have seisin, and we did our homage to the King and we received our land; and, since we are tenant of the King and he is seised of our homage, we do not think that you can make avowry for relief in arrear.

Scrope. You have heard how that this fine which we have tendered, which was levied between our ancestors of the one part and your aunt of the other part, witnesseth that the tenements passed out of the seisin of Robert and Hawise to be held of Hawise and of her heirs by the aforesaid services, which fine the plaintiff cannot deny; [and we ask judgment] whether he ought to deprive us of our relief because he saith that he is of the homage of the King.

Ingham. One Ralph of R. was seised of the said manor and held it of King Harry and did his homage for the manor to the same King. His son held it in the same way and did his homage to the same King; and his [son's] son held it in like manner and alienated it to Robert of Toddenham and Eve, his wife, and to the heirs of Eve, to hold of the chief lords of the fee; wherefore Eve, after the death of Robert, her husband, did her fealty to our lord the King; and the escheator seized [the manor after the death of Eve], as we said before, and for this reason we did homage to our lord the King and we received our land; and, since our lord the King is seised of our homage in the manner which we have said, we ask judgment if you can make avowry for relief in arrear.

BEREFORD C.J. He telleth you that these tenements were holden of the King. You cannot estrange the King from his tenant.

Ingham. One Ralph of Rochester was seised of these tenements and held them of King John in chief. The right descended from him to John as his son and heir. From John it descended to Piers as his brother and heir, and Piers did his homage to King Harry. From Piers the right descended to Harry as brother, and he did his homage to the same king; and from Harry the right in the tenements descended to Ralph as son and heir; the which Ralph granted these tenements to Hamond of Wond to hold of the chief lords of the fee; the which Hamond regranted these tenements to Ralph and Eve, his wife, and to the heirs of their bodies gendered, to hold of the chief etc.; and if Ralph and Eve died without heirs etc. then the tenements were to remain to the right heirs of Eve for ever. Ralph died without leaving an heir begotten of Eve; wherefore she, as the person in whom an estate of

fit fealte a nostre seynur le roy apres qy mort le eschetour seisi com nous deymes deuaunt par qay nous faimes nostre homage al roy par qay nous demaundoms iugement.

Scrop. Deuaunt le statut fines furent reseu de court auxi ben des tenementz qe furent tenuz du roy si ceo ne fut de la coroune com des tenementz qe furent tenuz de autri mes ore vous dioms qe cez tenementz furent tenuz com del honur de beloige [*sic*] issint qe coudre lestate le roy ne fut ceo mie leue a qay nous nauoms mie mestre a pleder qar nous pledoms od nostre tenaunt ou nous auoms mis fine auaunt en court qe sei leua entre ses auncestres del vne parte et nos auncestres del autre quele fine tesmoigne qe les tenementz passaient hors de la seisine nostre auncestre a tenyr de luy et ses heyres et ceo ne ount il mie dedit iugement si de nostre relief nous puissent barrer.

Westec. Sire la ou le roy est seisi semble a nous qe home ne dait nient aler a iugement a estraunger le roy mes nous vous dioms qe le roy est seisi de nostre homage par qay si nous aiuges cy retour pur relief auer vous estraungerez le roy de son tenaunt.

Berr. Cest vne altre voie de pleder.

Herel. A ceo nauoms mester a pleder qar salfit a nous a mayntenyr entre nous et nostre tenaunt qe nous auoms empris cest a dire nostre auowerie qant a la tierce persone cest a dire le roy de qy vous parlez qy serroit estraunge de son tenaunt si retour en ceo cas fut agarde ieo nel die nient pur plee qar nous auoms assez dit pur mayntenyr nostre auowerie le roy est seisi de nostre homage pur meymes les tenementz et de nostre relief par qay rienz de piert en ceo cas al roy.

Berr. Nous ne uoloms pas aler plus auaunt en cest mater ei la qe nous seoms auisez de la seisine le roy.

Note from the Record.¹

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 199d, Hertfordshire.

Galfridus de say attachiatus fuit per breue de statuto respondere Roberto de Insula de placito quare cepit aueria ipsius Roberti et ea iniuste detinuit contra vadium et plegios etc. Et vnde idem Robertus per Iohannem de Bokyntone attornatum suum dicit quod predictus Galfridus die Lune proxima post festum Annunciacionis beate Marie anno regni domini Regis nunc

¹ See the footnote on the opposite page.

fee simple remained, did fealty to our lord the King. After Eve's death the escheator seized [the tenements], as we said before, and we therefore did our homage to the King; and so we ask judgment.

Scrope. Before the statute fines were received in Court both of tenements held of the King, if they were not held of the Crown, and of tenements which were held of others; but now we tell you that these tenements were held of the honour of Boulogne, so that [the fine] was not levied to the disadvantage of the King's estate; and we have no need to plead in respect of that [estate], for we are pleading against our tenant, and we have tendered a fine in Court which was levied between his ancestors of the one part and our ancestors of the other, the which fine witnesseth that the tenements passed out of the seisin of our ancestor to be held of him and his heirs; and they have not denied that. Judgment whether they can bar us of our relief.

Westcote. Sir, there where the King is seised it seemeth to us that judgment should not be given to estrange the King [from his tenant]; and we tell you that the King is seised of our homage, and therefore, if you give judgment that we make return for the relief, you will be estranging the King from his tenant.

BEREFORD C.J. That is another way of pleading.

Herle. We have no need to plead to this, for it is sufficient for us to maintain between ourselves and our tenant what we have alleged, that is to say our avowry. As to the third person of whom you speak, that is to say, the King, who would be estranged from his tenant if return were awarded in this case, I have naught to say in the way of pleading, for we have said enough to uphold our avowry. The King is seised of our homage for the same tenements and our relief; and therefore there doth not appear to be aught in these circumstances that affecteth the King.

BEREFORD C.J. We are not disposed to go further in this matter until we have advised ourselves as to the King's seisin.

Note from the Record.¹

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 199d, Hertfordshire.

Geoffrey of Say was attached by a statutory writ to answer Robert de Lisle of a plea why he took the beasts of the same Robert and them did unjustly detain against gage and pledges etc. And thereof the same Robert by John of Bokinton, his attorney, saith that the aforesaid Geoffrey did on the Monday next after the Feast of the Annunciation of Blessed Mary in the

¹ I do not feel very sure that reports (II) and (III) above deal with the same case as (I), or that the Record given here is that of the case reported by (II) and (III), but it is certainly that of a very similar case.

Note from the Record—continued.

sexto apud Sabrichesworth in quodam loco qui vocatur Rotherwyke cepit quatuor boues et duos stottos ipsius Roberti et eos iniuste detinuit contra vadium etc. quousque etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam quadraginta librarum Et inde producit sectam etc.

Et Galfridus venit Et defendit vim et Iniuriam quando etc. Et dicit quod ipse predictis die et anno cepit predictos quatuor boues et sex [sic] stottos predicti Roberti Et bene aduocat capcionem eorumidem et iuste etc. Quia dicit quod predictus Robertus tenet de eo manerium de Pysshe cum pertinenciis in predicta villa per homagium fidelitatem et seruicium trium feodorum et dimidii et vnus quarterii feodi militis scilicet ad scutagium domini Regis quadraginta solidorum cum acciderit septem libras et decem solidos et ad plus plus et ad minus minus De quibus homagio fidelitate et seruicio Willelmus de Say pater ipsius Galfridi cuius heres ipse est fuit seisisus per manus Isabelle de Fortz consanguinee predicti Roberti cuius heres ipse est Et quia homagium predicti Roberti ei aretro fuit die capcionis predictae cepit ipse predicta aueria in predicto loco qui est parcella predicti manerii sicut ei bene licuit etc.

Et Robertus dicit quod predictus Galfridus predictam capcionem iustam aduocare non potest Dicit enim quod predictum manerium dudum fuit in seisina domini Henrici Regis patris Regis Ricardi qui de eodem manerio feoffauit quendam Warinum filium Geraldii qui obiit in homagio et seruicio eiusdem Regis Henrici et de ipso Warino descendit predictum manerium cuidam Warino vt filio et heredi qui similiter obiit in homagio ipsius Regis Henrici et de ipso Warino descendit idem manerium cuidam Margerie vt filie et heredi que obiit in homagio Regis Iohannis et de ipsa Margeria descendit predictum manerium cuidam Baldelino [sic] vt filio et heredi et obiit in homagio eiusdem Regis Iohannis Et de ipso Baldwino descendit idem manerium cuidam Baldwino vt filio et heredi qui obiit in homagio domini Henrici Regis aui domini Regis nunc Et de ipso Baldwino quia obiit sine herede de se resoreiebatur manerium illud predictae Isabelle de Fortz consanguinee etc. que etiam obiit in homagio domini Edwardi Regis patris domini Regis nunc ipso Roberto tunc infra etatem existente per quod idem dominus Rex seisire [sic] fecit manerium illud in manum suam per breue suum quod dicitur diem clausit extremum et cum idem Robertus ad plenam etatem peruenit fecit homagium suum domino Regi nunc pro eodem manerio Et desieut ipse et omnes antecessores sui predicti a tam longinquo tempore sine interrupcione tenuerunt manerium predictum de predictis progenitoribus Regis nunc per homagium etc. petit iudicium si predictus Galfridus super ipsum Robertum sic tenentem Regis etc. iustam districcionem aduocare potest in hac parte etc.

Et Galfridus dicit quod predicta Isabella et omnes antecessores sui a tempore Regis Willelmi conquestoris semper hucusque tenuerunt predictum manerium de antecessoribus ipsius Galfridi per homagium etc. et hoc pre-

Note from the Record—continued.

sixth year of the reign of the lord King that now is at Sawbridgeworth in a certain place which is called Rotherwyke take four bullocks and two steers, the property of the same Robert, and them did unjustly detain against gage etc. until etc., whereby he saith that he suffered loss and hath damage to the amount of forty pounds; and he produceth suit etc. thereof.

And Geoffrey cometh and he denieth force and injury when etc., and he saith that on the day and year aforesaid he took the aforesaid four bullocks and six steers, the property of the said Robert; and he doth well avow the taking of the same and justly etc., for he saith that the aforesaid Robert holdeth of him the manor of Pishobery with the appurtenances in the aforesaid vill by homage, fealty and the service due from three fees and half a fee and quarter of a fee held by knight's service, to wit, to the scutage of the lord King of forty shillings, when it shall occur, seven pounds and ten shillings, and when more, more, and when less, less; of which homage, fealty and service William of Say, father of this same Geoffrey, whose heir Geoffrey is, was seised by the hand of Isabel of Fors, cousin of the aforesaid Robert, whose heir Robert is; and because the homage of the aforesaid Robert was in arrear to him, Geoffrey, on the day of the aforesaid seizure, he seized the aforesaid beasts in the aforesaid place which is parcel of the aforesaid manor, as he was well entitled etc.

And Robert saith that the aforesaid Geoffrey cannot avow the aforesaid seizure as just, for he saith that the aforesaid manor was at one time in the seisin of the lord King Harry, father of King Richard, who enfeofed a certain Warin, son of Gerald, of the same manor, who died in the homage and service of the same King Harry; and from that same Warin the aforesaid manor descended to a certain Warin as son and heir, who likewise died in the homage of the same King Harry; and from this last-named Warin the same manor descended to a certain Margery as his daughter and heir, and she died in the homage of King John; and from this same Margery the aforesaid manor descended to a certain Baldwin as her son and heir, and he died in the homage of the same King John; and from this same Baldwin the same manor descended to a certain Baldwin as his son and heir, who died in the homage of the lord King Harry, grandfather of the lord King that now is; and from this Baldwin, because he died without heir of his body, that manor resorted to the aforesaid Isabel of Fors, cousin etc., who died in the homage of the lord King Edward, father of the lord King that now is, the said Robert then being within age; and therefore the same lord King caused that manor to be seized into his hand by his writ which is called the *diem clausit extremum*; and when the same Robert attained to his full age he did his homage to the lord King that now is for the same manor. And since he and all his ancestors aforesaid have held for so long a time without any interruption the aforesaid manor of the aforesaid progenitors of the King that now is by homage etc., he asketh judgment whether the aforesaid Geoffrey can avow a just distress in these circumstances upon him Robert, so holding of the King etc.

And Geoffrey saith that the aforesaid Isabel and all her ancestors from the time of King William the Conqueror up to now have always held the aforesaid manor of the ancestors of the same Geoffrey by homage etc., and

Note from the Record—continued

tendit verificare et petit Iudicium etc. Dies datus est eis de audiendo iudicio suo hic a die sancti Hillarii in xv. dies in eodem statu quo nunc etc. Postea in octabis sancte Trinitatis proximo sequentis continuato inde processu etc. uenerunt partes predictae per attornatos suos Et Robertus dicit vt prius quod ipse et antecessores sui predicti tenentes manerium predictum a tempore quo **manerium illud fuit in seisinâ** predicti Regis Henrici filii Regis Ricardi qui de eo feoffauit predictum Warinum tenendum de ipso Rege et heredibus suis per homagium etc. sicut predictum est Idem manerium semper hucusque tenuerunt de progenitoribus Regis nunc et ipso Rege per homagium etc. prout superius allegauit et hoc paratus est verificare per recordum Rotulorum cancellarii et rotulorum memorandorum de scaccario etc.

Et quia videtur Curie expediens esse super allegacionibus predicti Roberti certiorari in hac parte datus est eis dies hic in octabis sancti Michaelis per Iusticiarios etc. Et dictum est eidem Roberto quod interim certificet Curie hic super premissis si sibi viderit expedire etc. Postea in octabis sancte Trinitatis anno domini Regis nunc vndecimo continuato inde processu uenerunt partes predictae per attornatos suos et Robertus dicit quod predictus Galfridus non cepit predicta aueria in feodo suo Immo extra feodum suum et hoc petit quod inquiratur per patriam et Galfridus similiter Ideo preceptum est vicecomiti quod venire faciat hic in Crastino Animarum xij. etc. per quos etc. Et qui nec etc. Quia tam etc. Postea a die Pasche in xv. dies anno domini Regis nunc duodecimo continuato inde inter eos processu uenerunt partes predictae per attornatos suos et similiter Iuratores de consensu pareium electi qui dicunt super sacramentum quod predictus Galfridus cepit predicta aueria in feodo suo et non extra feodum suum Ideo consideratum est quod predictus Galfridus eat inde sine die et predictus Robertus nichil capiat per querelam istam set sit in misericordia pro falso clamore et predictus Galfridus habeat retorum predictorum aueriorum et quod aueria illa remaneant irreplegiabilia imperpetuum etc.

21. CRESSY v. GRETTON.¹I.²

Replegiare ou le defendant auowa pur la resoun qe le pleintif tient de luy xvj. Bouetz de terre par etc. le pleintif dit qil conust bien qe il tient de luy par taunt des seruiçes mes il dit qe il tient par terçe partie de maner de W. et prest fuist a fere les seruiçes com pur terçe partie de maner de W. et en tesmoignaunce de ceo il mist auant fyn.

Hughe de Cressy et Margerie sa femme porterunt lour replegiare vers B.

¹ Reported by B, C, E, H, M, and X (which gives the Record only). Names of the parties from the Plea Roll. ² Text of (1) from B collated with M.

Note from the Record—continued.

he offereth to aver this, and asketh judgment etc. A day is given them to hear their judgment here on the quindene of St. Hilary in the same state in which now etc. Afterwards, in the octaves of the Holy Trinity next following, process thereof being continued etc. the aforesaid parties came by their attorneys, and Robert saith as before that he and his aforesaid ancestors, tenants of the aforesaid manor from the time when that manor was in the seisin of the aforesaid King Harry, son of King Richard, who thereof enfeofed the aforesaid Warin to hold of the same King and his heirs by homage etc., as is aforesaid, have always up to now held the same manor of the progenitors of the King that now is and of that King himself by homage etc., as is alleged above, and he is ready to aver this by the record of the rolls of the Chancery and by the memoranda rolls of the Exchequer etc.

And because it seemeth expedient to the Court to advise itself as to the allegations of the aforesaid Robert in this connexion a day is given to them here by the Justices in the octaves of St. Michael etc. And the aforesaid Robert was told to certify the Court here in the meantime as to the premises, if it should seem to him expedient to do so etc. Afterwards in the octaves of the Holy Trinity in the eleventh year of the lord King that now is, process in the matter having been continued, the aforesaid parties came by their attorneys, and Robert saith that the aforesaid Geoffrey did not take the aforesaid beasts within his own fee, but without his fee; and he asketh that this may be inquired of by the country; and Geoffrey doth the like. Therefore the Sheriff is ordered to make come here on the Morrow of [All] Souls twelve etc. by whom etc., and who are neither etc., because both etc. Afterwards on the quindene of Easter in the twelfth year of the lord King that now is, process in the matter having been continued between the parties, the aforesaid parties came by their attorneys, and likewise jurors chosen by the consent of the parties who upon their oath do say that the aforesaid Geoffrey took the aforesaid beasts within his own fee and not without his fee. So it is considered that the aforesaid Geoffrey go without day thereof, and that the aforesaid Robert take naught by this plaint, but that he be in mercy for his false elaim. And the aforesaid Geoffrey is to have return of the aforesaid beasts, and those beasts are to remain irreplevisable for ever etc.

21. CRESSY *v.* GRETTON.¹

I.

Replevin, where the defendant avowed on the ground that the plaintiff held sixteen bovates of land of him by etc. The plaintiff fully admitted that he held of the defendant by the services stated; but he said that he held the land as a third part of the manor of W.; and that he was ready to render the services due for the third part of the manor of W.; and he tendered a fine in proof of his case.

Hugh of Cressy and Margery, his wife, brought their writ of replevin against B.

¹ See the Introduction, p. xxix above.

Wilb. ¹B. auowe² etc. pur la resoun qe mesmes ceux Hughe et Margerie come de dreit Margerie tent de lui³ vn mees xvj. bouees de terre etc. par homage seute⁴ et par les seruices de vn paire de blanke Gans ou vn denier par an des queux seruices il fust seisi etc. et pur ceo qe la seute et les gauns furunt arreres etc. si auowe il⁵ etc. sur Hughe et Margerie come de dreit Margerie.

Scrop. Nous tenoms de vous par les seruices auant ditz la terce partie de la manere de Walshingham come de dreit Margerie et vous dioms qe auant le iour de la prise nous tendimes les Gauns et la seute⁶ et onqore sumes prest a faire.

Denum. Et nous prest a receyure en la manere com nous auoms auowe.

⁷*Scrop.* Si vous auowet⁸ sur moy pur ceo qe ieo tenke de vous vne boue de terre ne puis ieo dire qe ieo tinge deux boues de terre et pur les seruices qe vous auez auowe quasi diceret sic.

Wilb. Nient semblable ⁹qe en le¹⁰ cas ou nous sumes a vn de la manere de la tenaunce le qel vous tenetz¹¹ par bouuetz ou par terce partie du manere ¹²par qei la Court suffreit bien mes ore nous ne seumes pas a vn de la manere de la tenaunce par qei etc.¹³ estre ceo tut feut lauerement ioynt sur la manere de la tenaunce et pays passat pur nous nous aueroms pas retourne¹⁴ par quai a tiele response ne deiuetz auenir.

Berr. Pur qei ne deit home crere auxi bien ceo qil dit come ceo qe vous distes et il ad conu qil tient de vous ¹⁵par ceux seruices come vous auez dist dunces a chascier luy a conustre qil tient sa tenance par bouez qe ne attret a luy nul profitz la ou il tient de vous¹⁶ par¹⁷ terce partie du maner qe attret a luy profit del seignurie et dautre appendaunces se serreit en countre ley.

Denum. ¹⁸Qil tienent vt supra vn mees et xvj. bouees de terre et il ne vnt mie tendu etc. prest etc.

Scrop. Ceo ne poetz dire qe vn G. vostre aancestre qi heir vous estes si enfeffa Thomas nostre ael de tantz des acres de boys a tenir de luy par mesme les seruices et puis ceo¹⁹ leua mesme cestuy G. fyn etc. a mesme cesti Thomas et coniseit les auantditz acres de boys ensemblement oue la terce partie du maner de Walshingle estre le dreit Thomas com ceo qil auoit de seon doun a auer et a tenir etc. de luy et de ces heirs a luy et a ces heirs par homage et fealte et vn paire de blanks Gauns pur toux seruices par quele fyn les seruices furent aviunetz²⁰

¹⁻² Nous auowoms, *M.*

³ nous, *M.*

⁴ For seute *M* has et fealte.

⁵ auowoms nous, *M.*

⁶ fealte, *M.*

⁷⁻⁸ *M* omits.

⁹⁻¹⁰ en ceo, *M.*

¹¹ tenissez, *M.*

¹²⁻¹³ la court ne ly sullereit pas en ceste plee de prise des auers qe est personnel, *M.*

¹⁴ recouerir, *M.*

¹⁵⁻¹⁶ *M* omits.

¹⁷ la, *M.*

¹⁸ *M* pre-

fixes Il ount conu.

¹⁹ se, *M.*

²⁰ aunz, *M.*

Willoughby. B. avoweth etc. on the ground that these same Hugh and Margery, as of the right of Margery, hold of him one messuage, sixteen bovates of land etc. by homage, suit and by the services of one pair of white gloves or one penny every year, and of these services he was seised etc. ; and because the suit and the gloves were in arrear etc., he avoweth etc. upon Hugh and upon Margery as of the right of Margery.

Scrope. We hold of you, as of the right of Margery, the third part of the manor of Walsingham by the aforesaid services, and we tell you that before the day you levied distress we tendered the gloves and the suit, and we are still ready to do so.

Denham. And we are ready to accept them in accordance with the form of our avowry.

Scrope. If you avow upon me on the ground that I hold a bovaté of land of you, cannot I say that I hold two bovates of land and for the services of which you have avowed?—*intimating that it was open to him to say this.*

Willoughby. The case is not analogous. If we were in agreement as to the fashion in which you hold, whether by bovates or as the third part of the manor, the Court might perhaps allow you to say as you suggest ; but here we are not in agreement as to how you hold, and therefore etc. Further, if averment were joined upon the manner in which you hold and though the verdict were given in our favour, we should not get return ; and therefore you ought not to be allowed to make such answer.

BEREFORD C.J. Why should we not as readily believe what the tenant saith as what you say ? And he hath acknowledged that he holdeth of you by the services you have stated. It would be against the law, then, to force him to admit that he holdeth his land by bovates, a tenancy to which no profits naturally accrue, if he hold it as the third part of the manor, a tenancy to which the profits of lordship and of other appendancies do naturally accrue.

Denham. Ready etc. that he holdeth *ut supra* a messuage and sixteen bovates of land, and that he hath not tendered etc.

Scrope. You cannot say that, for one G., your ancestor, whose heir you are, enfeoffed Thomas, our grandfather, of so many acres of woodland to hold of him by these same services ; and this same G. afterwards levied a fine etc. to this same Thomas, and recognised that the aforesaid acres of woodland, together with the third part of the manor of Walsingham, were the right of Thomas, as having them by his grant, to have and to hold etc. of him, G., and his heirs, to him, Thomas, and his heirs, by homage and fealty and a pair of white gloves, for all services ; and by that fine the services were to be the same [as before, for both the

et moustra la fyn et la chartre a la court et demandoms iugement si encountre la fyn qe prene qe les seruices passerunt hors de la mayn vostre¹ auneestre pur terce partie de maner a terer etc. puysset sur nous faire auowerie come sur celui qe tient par boueetz.

Wilb. ²Issue ne pust³ en nule manere estre fait en⁴ ceste plee sur la tenaunce qen brei de eustumes et seruices qest done en lieu de destresse si⁵ nous vousissoms dire qe vous tenietz par boueetz vous ne purrietz my dire qe vous tenietz par terce partie du maner et sur ceo pledeererez⁶ [*sic*] outre a mult plus fort ne icy.

Denum ad idem. Nous ne pledoms mye del demene ne nous demaundoms autres seruices qe ne sunt compris dedens la fyn par qei qante qil⁷ pledunt de la fyn si est impertinent a ceo plee.

Berr. La court durra plus de foy a ceo qil mettunt auant qest le feat vostre auneestre et de recorde qe proue ⁸qil tient⁹ par terce partie de manere qe a vostre simple dist ¹⁰qil tient¹¹ par boueetz et vostre auowerie ne vaudra¹² mye vne maille si nous ne¹³ deisset qil tenyt de vous.

Herle. Tout soit il qe lun auowe pur ceo qil tynt par bouees et lautre dist qil tint par terce partie du maner rien¹⁴ ne despert ne destrat¹⁵ al vn ne al autre qe tut est salue par la protestacioun en dreit de la seignurie et totuz [*sic*] autres choses qar ceste plee ne pust nient cheir si noun soulement sur les seruices.

*Scrop Iustice.*¹⁶ Sil portasunt vers vous brei de homagio capiendo et vous chargeint par vertue de ceo fait a prendre lour homage come ceux qe teignent de vous par terce partie du maner pur qei ne pount il ore¹⁷ pleder en mesme la manere al auowerie.

Postea la fyn feust lyeu qe voleit qe G.¹⁸ ael le pleintif¹⁹ auoit graunte etc. la terce partie de toux ceux tenementz en Walsingham.

Berr. La fyn ne proue mye vostre dist.

Scrop. Cele terce partie feut la terce partie du manere etc.

Et nota qe les tenementz compris en la chartre et les seruices ouesqe si furent compris oue les tenementz contenuz en la fyn par vn preterea.

Berr. Vostre protestacioun de vne partie et dautre saue tout ensemble qar ico pos qe vous vosdrez vocher le pleintif par mesme

¹ *M* omits. ²⁻³ issint prouetz, *M*. ⁴ est, *M*. ⁵ et, *M*. ⁶ pleder, *M*. ⁷ il, *M*. ⁸⁻⁹ qe vous tenez, *M*. ¹⁰⁻¹¹ From *M*; qe vous tenietz, *B*. ¹² *M* omits. ¹³ *M* omits. ¹⁴⁻¹⁵ deperde ne destresse, *M*. ¹⁶ Added from *M*. ¹⁷ *M* omits. ¹⁸ From *M*; ico *B*. ¹⁹ Clearly a slip for *defendant*.

woodland and the third part of the manor] ;—and he tendered the fine and the charter to the Court—and we ask judgment whether you can avow upon us as upon one that holdeth by bovates in face of the fine which proveth that the services passed from the hand of your ancestor [as services] for a third part of the manor to hold etc.

Willoughby. You cannot, in this plea, take issue in any way upon the [nature of the] tenancy ; for if, in a writ of customs and services, which is given in lieu of distress, we wanted to say that you held by bovates, you could not say that you held by the third part of the manor ; and you would thereupon have to plead over ; *a fortiori* you cannot say it here.

Denham ad idem. We are not pleading as to the demesne, and we are not claiming services other than those which are reserved by the fine ; and, therefore, anything that he pleadeth as to the fine is irrelevant to this plea.

BEREFORD C.J. The Court will attach greater faith to that which they tender, namely, the deed of your ancestor, which is also a matter of record, which proveth that the plaintiff holdeth by the third part of the manor, than to your bare assertion that he holdeth by bovates ; and your avowry is not worth a halfpenny unless you do something more than say that he holdeth of you.

Herle. Though the defendant avow on the ground that the tenant holdeth of him by bovates, and the tenant saith that he holdeth by the third part of the manor, neither the one nor the other is in any peril of loss or harm, in respect of the lordship and all the other matters, for the whole question as to them is reserved by the protestation ; for the issue in this plea can only be as to the services.¹

SCROPE J. If the plaintiff brought a writ *de homagio capiendo* against you and called upon you, by virtue of this deed, to receive his homage as holding of you by a third part of the manor, [as he could do.] why cannot he now plead in the same manner to the avowry ?

On a later day the fine was read and it witnessed that G., the defendant's² grandfather, had granted etc. the third part of all those tenements in Walsingham.

BEREFORD C.J. The fine doth not prove what you said.

Scrope. This third part was the third part of the manor of Walsingham.

And note that the tenements comprised in the charter, together with the services therefor, were included together with the tenements in the fine by a *preterea*.

BEREFORD C.J. The protestations made by the several parties have the effect of reserving the whole question ; and I put the case

¹ Is *Herle* speaking as *amicus curiæ* ?

² See the text and footnote.

la fyn come tenaunt de terce partie vous purriet bien et ceo plee ne vous greuerait mie.

Ston. Sil faee orce les services come il ount auowe com celui qe tient par bouees et puyz apres feust destreynt par le seignur paramount et il demandast la quitaunce come celui qe tient par terce partie du maner par eas il luy greuerait.

Berr. Noun freit qe ¹la protestacioun luy sauuerait.²

II.³

Replegiare.

Ion de Grottone et Margerie sa femme porterent lour replegiare et se pleynt de .ij. vaches en T. W. auowa pur ly mesme et conusoit cum Baillif pur Alice sa parcenere par la resoun qe mesme cely Ion tent de ly et de M. sa femme et vne Alice seor mesme cesti M. vn mes .vj. bouez de terre etc. en G. par services de vn payr de gantz et vn .d. par an par homage fealte et escuage et sute a lour court de G. de .iij. semaynes en .iij. semaynes etc. dez queus services il furent seisis par my la mayn etc. et pur ceo qe la seute fut arere et .iij. payr de gantz ou .iij. d. de .iij. aunz deuant le iour de la prise si auowe il ete.

Scrop. Nous tenoms la terce partie del maner et xvj. boues de terre de vous par lez services auant ditz lez queus nous auoms souent tendu et vneore tendoms etc.

Denom. En la manere com nous auoms auowe volunters receyueroms.

Scrop. Si nous feissoms lez services auxi com vous auez auowe nous affermeroms nostre tenauntz par bouez com vous par lauowerie lauez suppose ou nous tenoms par terce partie de maner la quele tenance nous doune seignuryele auantages com agistement et aprowement de wast et demaundoms iugement si entant de preiudice de nous deuoms attormer a vous et qe nous tenoms par terce partie de maner prest etc.

Denom. A trier la manere de la tenaunce par cesti bref nauendrez mye qe cesti bref ne determyne fors qe tant soulement lez services dount a trier la tenaunce encountre la fourme du bref la court ne vous receyuera mye etc.

Will. ad idem. Si lauowerement fut reseu le iugement se freit sur la manere de la tenance et vncoro demoreit les services a trier solom

¹⁻² par sa protestacioun serra il salue etc., *M.*

³ Text of (II) from *C.*

that you [the defendant] wanted to vouch, by virtue of the fine, the plaintiff as tenant of the third part of the manor, you could certainly do so without such a plea prejudicing you.

Stonor. If the plaintiff were now to render the services as tenant by bovates, in accordance with the defendant's avowry, and were afterwards to be distrained by the lord paramount, and were then to claim acquittance as being tenant of a third part of the manor, peradventure such a plea would work to his prejudice.

BEREFORD C.J. It would not, for the protestation would save him.

II.

Replevin.

John of Gretton and Margery, his wife, brought their writ of replevin and complained in respect of two cows in T. W. avowed for himself, and, as bailiff for Alice, his parcener, admitted [the seizure], on the ground that this same John held of him and of Margery, his wife, and of Alice, sister of that same Margery, a messuage, six bovates of land etc. in G. by the services of a pair of gloves and one penny a year, [and] by homage, fealty and scutage and suit at their Court of G. every three weeks etc., of the which services they were seised by the hand etc. ; and because the suit was in arrear, and also three pairs of gloves or three pence for three years before the day of the seizure, he avoweth etc.

Scrope. We hold the third part of the manor and sixteen bovates of land of you by the services aforesaid, which we have often tendered to you and again tender etc.

Denham. We are ready to accept them in the form in which we have avowed.

Scrope. If we were to render the services according to the form of your avowry we should be admitting that we held by bovates, as you by your avowry do assert, whereas we hold by the third part of the manor, the which tenure doth give us seignorial advantages, such as agistment and approvement of waste ; and we ask judgment whether we are bound, to our such great prejudice, to attorn to you ; and we are ready etc. that we hold by the third part of the manor.

Denham. You will not be allowed to try the nature of the tenancy under this writ, for this writ determineth naught save the services only. The Court, consequently, will not receive you etc. to try the tenancy against the form of the writ.

Willoughby ad idem. If the averment were received, judgment would be given upon the nature of the tenancy, and the question of the services would still remain to be tried in accordance with the nature

la nature du bref et le iugement a rendre et issy .ij. iugements de diuers nature en vn mesme plee qe serreit inconuenient de ley.

Scrope. La tenance est cause dez seruiees et vous dites qe par cel bref lez seruiees sount a trier solom la nature del bref sur la cause et depuys qe nostre auerement chet a trier la cause dez seruiees iugement si de cest auerement nous deuez ostee et la ou *Will.* dit qe deux iugements se frayent sur vn mesme plee il dit talent qe nul plee chet sur lez seruiees care lez seruiees sount conuz dount si iugement se face sur ceo qe chet en plee qe est la manere de la tenaunce non est inconueniens.

Berr. Quel elamez vous cele tenance de veuz [*sic*] ou de nouele.

Scrope. Nous vous dioms qe soun ael qi heir il est dona a nostre auneestre qi heir nous sumes la terce partie del maner auantdit a tenir par lez seruiees auantditz et pus se leua vne fyn entre soun ael et le nostre par quele il graunta et reudy vn mees et xvj. bouez de terre a nostre ael a tenir of la terce partie del maner auantdit de ly et de sez heirz par mesmes lez seruiees inclus en la chartre et de pus qe la chartre et la fyn entre nos auneestres de vne parte et dautre tesmoigne nostre tenaunce par terce partie de maner forpris .xvj. bouez de terre **iugement** si encountre la fyn qe est de record put il par bouez nostre tenaunce affermer.

A vn autre iour la chartre et la fyn fuerunt leue la quele chartre voleit terciā pars omnium terrarum et tenementorum que fuerunt al auneestre Wauter par lez seruiees dues de mesme la terce partie.

Denom. Il ad conu lez seruiees pur lez queux nous auoms auowe et il ad dit qe il lez ad souent tendu qe il ne lez tendy pas prest dauerer et la ou il dit solom la tenaunce par la terce partie del maner prest a fere lez seruiees et a prouer sa tenaunce cele il mette auant diuers fetes qe ne prouent naye soun dit dount solom nostre auowerie nous prioms retourn et lattornement.

Scrop. Nous voloms auerer qe soun ael naueit autres tenementz en .G. for le maner et la chartre et la fyn prouent qe il dona la terce partie de ceux tenementz en .G. et issint prouent il qe il dona la terce partie del maner.

Stonor. Qil feit ore lez seruiees solom la tenaunce lie en sa auowerie

¹ One of the many Anglo-French forms of *onesque*.

of the writ, and judgment given, and so there would be two judgments, distinct in kind, to be given in one and the same plea, and that would be incompatible with law.

Scrope. The tenancy is the cause of the services, and you say that under this writ the services are to be tried in accordance with the nature of the writ. Since our averment goeth to the trial of the cause of the services, [we ask] judgment whether we ought to be barred from this averment; and when *Willoughby* saith that two judgments will be given in one plea he is talking at random, for no question ariseth as to the services, for the services are admitted; so that judgment would be given in respect of that which is in dispute, that is, the nature of the tenancy, and there is naught incompatible with law in that.

BEREFORD C.J. Do you claim this form of tenancy as the original one or as a new one?

Scrope. We tell you that the avowant's grandfather, whose heir the avowant is, granted to our ancestor, whose heir we are, the third part of the aforesaid manor to hold by the aforesaid services; and a fine was afterwards levied between his grandfather and ours, whereby the avowant's grandfather granted and surrendered a messuage and sixteen bovates of land to our grandfather to hold together with the third part of the manor aforesaid of him and of his heirs by the same services which are reserved in the charter; and since the charter and the fine levied between our ancestors of the one part and the other witnesseth our tenancy by the third part of the manor, save of the sixteen bovates of land, [we ask] judgment whether against the fine, which is of record, the avowant can assert that we hold by bovates.

On another day the charter and the fine were read. The charter spoke of the [grant of the] third part of all the lands and tenements which belonged to Walter's [*sc.* the avowant's] ancestor, [to be held] by the services due from the same third part.

Denham. He hath admitted the services for which we have avowed, and he hath said that he hath often tendered them. We are ready to aver that he hath not tendered them; and whereas he saith that he is ready to render the services according to the tenancy by the third part of the manor, and in proof that his tenancy is such putteth forward divers deeds which do not prove that which he saith, we, therefore, pray return and attornment in accordance with our avowry.

Scrope. We will aver that the avowant's ancestor had no other tenements in G. save only the manor; and the charter and the fine prove that he granted the third part of those tenements in G., and, consequently, they prove that he granted the third part of the manor.

Stonor. If the plaintiff were now to render the services in accord-

et autrefoiz feut a porter lacquitaunce vers ly de la terce partie si serreit ceste attornement preiudiciel a ly pur qil se attornereit com tenaunt de bouez et si donqe demandereit la acquitaunce de la terce partie del maner encountre soun attornement.

Berr. Si ieo vous vouche dez tenementz a lez queux vous auez accioun et vous entrez en la garauntie salue a vous vostre accioun cele entre qe vous entrastez par protestacioun ne vous serra pas preiudiciel quant vous deuez vostre accioun vser auxi par de ca fetes a ly lez seruices par protestacioun et quant la manere de la tenaunce cherra en discrecioun cel attornement ne vous serra pas preiudiciel.

Denom. Il ad suppose le dreyt dez seruices auxi auant en sa persone par qei il ad conue en sa persone demene par qei nous ne nentendoms qe a ly soul sanz sa parcenere deuoms attorner qe si nous feymes par mesme la cause purra sa parcenere destreyndre com il fet ore.

Denom. Si ma parcenere ne veot sewre soun bref duresse serreit qe pur tant serra ieo aloigne de mouin dreyt.

Et pur ceo qe Ion de Grottone et Margerie sa femme fuerunt par attorne Alice lour parcenere ne fut mye par attorne ne en propre persone fut auyz a la court qe il ne ne [*sic*] fut chace de attorner sanz sa parcenere par qei fut graunte vn bref a somoundre sa parcenere de estre yci a la xv^e de seynt Hillarie pur receyure lattornement etc.

III.¹

Replegiare.

Thomas de Cresci se pleynt qe William de grattone a tort prist ces auers.

Den. auowa la prise bone etc. et pur la resoun qe mesme celuy Thomas et Margerie sa femme come del dreit Margerie tenent de luy et de Hawise sa femme com del dreit Hawise vn mees et xvj. boues de terre par homage fealte et vn [pair] blaunz gaunz par au des quex seruices il furent seisis etc. et pur les seruices de .liij. auns arer auant le iour de la prise etc. si auowe il etc.

Scrop. La ou vous dites qe nous tenoms vn mees et xvj. boues de terre nous tenoms de vous la terce partie del maner de Wandislay par mesmes

¹ Text of (III) from *E*.

ance with the tenancy as it is laid in the avowant's avowry, and then at some future time should bring his writ of acquittance against the avowant in respect of the third part, this attornment would prejudice him if he sought the acquittance of the third part of the manor, because he would attorn as holding by bovates.

BEREFORD C.J. If I vouch you [to warranty] of tenements in respect of which you have a right of action, and you enter into the warranty, saving to yourself your right of action, the warranty which you entered into under this protestation will not be to your prejudice when you want to avail yourself of your right of action. So here. Render him the services under a protestation; and, when the nature of the tenancy cometh up for judgment, this attornment will not be to your prejudice.

Denham. The avowant hath supposed the [right in the] services, as above, to be in his person, and doth, consequently, speak for himself only; and therefore we do not think that we ought to attorn to him alone without his parcener; for, if we did, his parcener might levy distress on the same pretext as he hath now done.

Denham. It will be a hardship if I am deprived of my share of the services because my parcener will not sue out her writ.

And because John of Gretton and Margery, his wife, were present by attorney, and Alice, their parcener, was present neither by attorney nor in her own person, the Court was of opinion that the plaintiff should not be made to attorn in the absence of the parcener; and a writ was consequently granted summoning the avowant's parcener to be here on the quindene of St. Hilary to receive the attornment etc.

III.

Replevin.

Thomas of Cressy complained that William of Gretton wrongfully took his beasts.

Denham avowed the taking as good etc., for the reason that this same Thomas and Margery his wife, as of the right of Margery, hold of William and of Hawise, his wife, as of the right of Hawise, a messuage and sixteen bovates of land by homage, fealty and a pair of white gloves every year, of which services William and Hawise were seised etc.; and for the services of three years in arrear before the day of the taking, he¹ avoweth etc.

Scrope. Whereas you say that we hold a messuage and sixteen bovates of land, we [say that we] hold of you the third part of the

¹ i.e. Denham.

les seruices pur les quex vous auetz auowe et souent en pays nous vous auoms tendu les seruices auaunt diz com pur terce partie de maner et vnkor fesoms par qey nous demaundoms iugement et prioms nos damages.

Hic. Nous ne sumes pas a vn de la tenaunce qe nous dioms qe vous tenez de nous par bouez com nous auoms auowe et si vous voletz tendre les seruices en cel maner nous les rescueroms et vous dioms qe vous ne les tendimes vnkor adeuaunt ore prest etc.

Scrop. A moi est a sauier ma tenaunce pur la quele ieo dey mes seruices faire et prest syu [*sic*] dauerer qe ieo tenk par terce partie de maner.

Denum. De prendre auerement qe serreit impertinent a ceo plee la Court ne le fra pas qe le issue de ceo plee sur qey la Court fra iugement si serra sur les seruices qe serreient ou conuz ou desdiz et neient sur la qualite de la tenaunce qe si auerement se ioynsist qe vous tenissetz par bouez et neient par terce partie de maner et troue fu qe vous tenissetz par bouez nous naueroms pas retour ne vous recoueretz pas damages si troue fu la tenaunce par terce partie de maner dunk a prendre issue en ceo cas sur la quantite [*sic*] de la tenaunce par quel issue Court ne poet iugement feer ne semble pas qe vous le voletz reseiere.

Herle. Depus qe le issue qil tendent nest pas incident a ceo plee seit nostre auowery entre de vne part et lur respouns daltere par qei homme ne auera nye deus auerementz en vn mesme plee.

Et issint fut il et le tenaunt tendist sa fealte.

Denum. Nous sumes prest de reseiere la com pur mees et xvj. boues de terre.

Scrop. Vous auetz auowe en vostre noun demene et conu en le noun vostre parcener com bailif ou bailif ne poet la fealte reseiere par qei nous demaundoms iugement.

Denum. Nous prioms eyde de nostre parcener et habuit.

Avaynt iour a quel iour les parceners vindrent.

Denum. Seit vostre protestacioun entre qe vous tenez par terce partie de maner qe a cesti bref la tenaunce ne poet nent estre trie fors soulement les seruices.

Scrop. Vous naueretz mie protestacioun entre en ceo cas mes si vous anowetz sur moy pur la resoun qe ieo teigne de vous par plusours seruices et pur fealte arer auowetz la prise bone ieo tendrey la fealte et direi qe ieo teigne de vous par ceux seruices et nemye par ceux auxi

manor of Wandesley by those same services for which you have avowed; and we have oft-times tendered to you in the country the services aforesaid as for the third part of the manor, and we still do so; and therefore we ask judgment and pray our damages.

Herle. We are not at one as to the tenancy, for we say that you hold of us by bovates in accordance with our avowry, and if you be willing to tender the services after that form we will accept them; and we tell you that never yet up to now have you tendered them, ready etc.

Scrope. It is for me to save my tenancy for which I owe my services, and I am ready to aver that I hold by a third part of the manor.

Denham. The Court will not allow you to make an averment which is irrelevant to this plea, and the issue of this plea upon which the Court will give judgment will be as to the services, which should be either admitted or denied, and not upon the nature of the tenancy; for if averment that you hold by bovates and not by the third part of the manor be joined, and it were found that you hold by bovates, we should not get return; nor will you recover damages if it be found that the tenancy is of a third part of the manor. It appeareth, then, that to take issue in these circumstances on the nature of the tenancy, on which issue the Court cannot give judgment, [would be to take an issue which] you [*sc.* the Court] would not accept.

Herle. Seeing that the issue which they offer is not relevant to this plea, let our avowry on the one side be entered [in the roll] and their answer on the other, and so we shall not have two averments in the same plea.

And so it was done, and the tenant tendered his fealty.

Denham. We are ready to accept it in respect of a messuage and sixteen bovates of land.

Scrope. You have avowed in your own name and acknowledged [the taking] in the name of your parcener as her bailiff, but a bailiff cannot receive fealty; and therefore we ask judgment.

Denham. We pray aid of our parcener—and he had it.

They had a day and upon that day the parceners came.

Denham. Let your protestation that you hold by a third part of the manor be recorded; but under this writ the tenancy cannot be tried but the services only.

Scrope. You will never get a protestation recorded in these circumstances; but if you avow upon me on the ground that I hold of you by various services and avow your seizure a lawful one because of fealty in arrear, I shall tender the fealty and shall say that I hold of you by these services and not by those of which you have avowed,

com vous auetz auowe et cel serra entre en protestacioun qar issue ne se poet mye prendre sur cel poynt pur ceo qe le debat et le plee chet soulement sur la fealte arer par quey voletz lauerement.

Denum. Si la court veie qe vous poetz prendre issue sur la quantite [sic] de la tenaunce nous le voloms.

Berr. Il tende dauerer qil tent par terce partie de maner et si vous ne le desdites nous le tendroms pur graunte et si aueretz vous iugement meyntenant . . . ¹

Denum. Il ne tent mye par terce partie de maner prest etc.

Et alii econtra.

IV.²

Replegiare.

Iohan de Grottone fut atache a respounder a Thomas de Cressi de plee pur qei atort il prist ses auers etc.

Denom auowe la prise etc. pur ly meimes et conoist com baillif vne Alice sa parcener par la resoun qe meime ceti Thomas tent de ly et vn Eme sa femme et Alice soer meime ceti M. [sic] par qei etc. vn mies xvj. bouez de terre etc. en grottone par homage fealte escuage etc. et suyt etc. des queux services ils fuerunt seisz par mie la main etc. et pur tant arrerages etc. si auowe etc.

Denom. Nous vous reseuiueroms en la manere com nous auoms auowe.

Scrop. Si nous faissoms les services en la manere com nous auez auowe nous affermeroms nostre tenaunce par bowez com vous supposez par lanowerie ou nous tenoms par tierce partie de maner la quele tenaunce nous doune de seignurie auantage com agistementz et appruuementz de wast et demaundoms iugement si en taunt des-anauntage deuoms attorner.

Scrop. Sire ceo qe il nome com bouez nous vous dioms qe ces tenementz passaint hors de la seisine William de grattone par fine leue en cest court le quel William graunta et rendit ces tenementz qe il nome par bouez com tierce partie de vile ensemblement od altres tenementz compris deynz la fine a tenyr par tiel services pur queux il auowe queux services sulom la forme de nostre tenaunce auoms este tut foitz prest a faire et unkor sumes et demaundoms iugement si lur

¹ Three or four words have here been cut away in binding the MS.

² Text of (IV) from H.

and that will be recorded by way of protestation, for issue cannot be taken on that point, because the dispute and the plea turn solely on the fealty in arrear. Are you willing, therefore, to accept the averment?

Denham. We are willing, if the Court be of opinion that you can take issue on the nature of the tenancy.

BEREFORD C.J. He offereth to aver that he holdeth by the third part of the manor, and if you do not deny it we shall take it as granted and you will have judgment straightway.¹

Denham. Ready, etc., that he doth not hold by the third part of the manor.

And issue was joined.

IV.

Replevin.

John of Gretton was attached to answer Thomas of Cressy of a plea why he wrongfully took his beasts etc.

John² avowed the seizure on his own behalf, and acknowledged it as bailiff of one Alice, his parcener, on the ground that this same Thomas held of him and one Emma, his wife, and Alice, sister of this same Emma, a messuage, sixteen bovates of land etc. in Gretton by homage, fealty, scutage etc. and suit etc., of which services they were seised by the hand etc., and for such and such arrears etc. he doth avow etc.

Denham. We are willing to receive you [to render the services] in accordance with the form of our avowry.

Scrope. If we rendered the services in accordance with the form of your avowry, we should be agreeing that we held by bovates, as you suppose in your avowry; whereas we hold by the third part of the manor, a tenure which giveth us the privileges of lordship, such as agistment and improvements of waste; and we ask judgment whether we ought to attorn so greatly to our disadvantage.

Scrope. Sir, in regard to what he saith of bovates, we tell you that these tenements passed out of the seisin of William of Gretton by a fine levied in this Court. The same William granted and surrendered these tenements, which the avowant doth describe as bovates, as the third part of the vill, together with other tenements included in the fine, to hold by the services for which the avowant avoweth. We have always been ready, and still are so, to render these services in accordance with the form of our tenure; and we ask judgment whether they

¹ See the text and footnote thereon.

² The *Denom* of the text is certainly a slip for *Johan*.

auowerie purroit lier en autre maner ou tenaunce en autre manere assigner qe de terce partie com la fine en say qe est recorde tesmoygne et mist anaunt la fine qe tesmoygna son dit.

Ston. Sil fait ore les seruices sulom la tenaunce lye en sa auowerie et altre foiz fut a porter laquitaunce deuers ly de la terce partie sierrait [*sic*] cest attornement preiudiciel a ly pur ceo qil se attorna com tenaunt de bouez et demaunderait laquitaunce de terce partie encountre son attornement.

Berr. Si ieo uous vouche des tenementz a queux nous auez accioun et uous entrez en la garauntie saue a uous vostre accioun cel entre par protestacioun ne uous serra mie preiudiciel auxi par de ca fetez a ly les seruices par protestacioun et quant la manere de la tenance cherra en descrecioun cel attornement ne uous serra nient preiudiciel.

Denom. Nostre plee chet tut sur deresner des seruices dunke nous a pleder del demayne si il ne fut de substaunce de plee qe ne chet pas cy qar ceo plee prendra issue en discussion des seruices et en nul autre rien a qey nous sumes a vn duuk a pleder outre sur le demayn nent en demaunde demaundoms ingement si nous le deuoms.

Berr. Vous auez auowe sur uerrey tenaunt de certeynz tenementz et assignez les tenementz les queus il tynt de vous ore couient il qe vous diez qey il tent et ne fetez poynt qar il dit qe il tynt par terce partie de vile et de ceo mette il anaunt chose de recorde ou vous nanez forsqe vostre vent.

Denom. Il moy semble qe ceo nest mie cause de nostre iugement qe prendra en ceo cas car si auerement sei prist ceo ne uerrait a nule effecte qar ceo ne serroit a la substance de plee.

Berr. Mes il couient qe vous seez a vn endroit des tenementz queux vous chargez des seruices.

Herel. Rien ly depart mes qe il acceptat la auowerie il ne purra plus tard clamer a tenyr terce partie de vile qar si ceo fut autrefoitz en debate le accepter ne luy serroit preiudiciel qar le iugement ne sei taylle mie sur ceo principalement eynz sur altre coste [*sic*].

Berr. Ceo dount iugement sei prent ceo est issaunt de terre et par resoun de la terre ceus seruices sount demaundez dount couient il qe

can make other avowry, or assign other tenancy than of the third part [of the manor] as the fine, which is of record, doth itself witness—and he tendered the fine which bore out what he said.

Stonor. If the plaintiff were now to render the services as for such a tenancy as is laid in the avowant's avowry, and were afterwards to bring his writ of acquittal against him in respect of the third part of the manor, this attornment would be prejudicial to him, because he would attorn as tenant of bovates and would claim acquittal in respect of the third part of the manor, contrary to [the nature of] his attornment.

BEREFORD C.J. If I vouch you in respect of tenements for which you have a right of action and you enter into the warranty but save to yourself, by protestation, your right of action, that entry [into warranty] under protestation will not act to your prejudice. So here. Render the services to the claimant under a protestation, and when the nature of the tenancy shall come up for judgment this attornment will be in no way prejudicial to you.

Denham. Our plea goeth wholly to our right to the services. Your plea as to the demesne is irrelevant to our plea which is not concerned with that point, for our plea will have its issue upon discussion of the services and upon naught else, and we are agreed as to the services. Therefore we ask judgment whether we ought to plead over to the demesne, which is not claimed.

BEREFORD C.J. You have avowed upon the plaintiff as your very tenant of certain tenements, and you have specified the tenements which he holdeth of you. You must now say how he holdeth [of you], which you do not ; for he saith that he holdeth by the third part of the vill, and in proof of that he proffereth matter of record, while you bring forth naught but your wind.

Denham. It doth not appear to me that your judgment in this case will turn upon this point ; for if averment were taken it would have no effect, because it would not go to the substance of the plea.

BEREFORD C.J. But you must be in agreement in respect of the tenements you are charging with the services.

Herle. Even though he accept [the form of] the avowry he will not in any way be thereby prevented from claiming at a later time to hold by the third part of the vill ; for if this be at other time contested, his present acceptance will not then be prejudicial to him, for the judgment in this case will not turn principally upon that point, but upon another.

BEREFORD C.J. What that judgment will turn upon is the issues of the land,¹ and it is by reason of the land that those services are

¹ The text here, as elsewhere, is corrupt, and the translation given is to some extent conjectural.

vous seez a vn de la terre qar la terre est principal cause de ceste charge de seruices.

Scrop. Nous vous dioms qe nous auoms este tuttefoyz prest a faire les seruices et vnkor sumes a vous et a vostre parcener.

Denom. Nous voloms auerer qe vous ne le nous tendistes nunkes et nous serroms prest quel hure qe vous les tendez a nous de resceiuere les.

Scrop. Ou est Margerie le attourne ad auowe pur Iohan et sa femme et nul homme est cy com baillyf lautre ore auez dit qe Iohan conoist com bayllif Margerie et Iohan est cy par attourne coment purra bayllif fere attourne et vous dioms outre qe nous auoms este tut voyes prestez a payer etc. et unkor sumes a ceux a qy nous les denoms faire mes lautre en qy noun ils ount conu nest par bayllif ne en propre persone.

Denom. Mes qe issi sayt eynz qe defaistez nostre auowerie nous auoms bref hors de cyenz de faire nostre parcener uenyr.

Scrop. Qay si ele fet defaute entendez vous qe nous frooms les seruices nanil et per consequens vous nauerez somouns mes esterrez a vostre peryl com vous auez auowe.

Denom. Nous prendroms qe la court nous agardera.

Scrop. Il auera bref a somoundre son parcener.

Note from the Record.¹

De Banco Roll, Mich., 8 Edw. II. (No. 207), 136d, Nottinghamshire.

Willelmus de Gratone alias attachiatus fuit per breue de Iudicio ad respondendum Thome de Cressy de placito quare cepit aueria ipsius Thome et ea iniuste detinuit contra vadium et plegios etc. Et vnde Idem Thomas per attornatum suum questus fuit quod predictus Willelmus die sabati in vigilia ramis palmarum anno regni Domini Regis nunc quarto in villa de Selstone in quoddam loco qui vocatur vndirville Rowe cepit duos equos ipsius Thome et eos iniuste detinuit contra vadium etc. quousque etc. vnde dicit quod deterioratus fuit et dampnum habuit ad valenciam centum solidorum Et inde produxit seetam etc.

Et Willelmus per attornatum suum tunc venit Et defendit vim et iniuriam quando etc. Et bene cognouit quod ipse predictis die et anno cepit predicta aueria tam nomine suo et cuiusdam Isabelle vxoris eius quam tanquam Ballius quorundam Willelmi de Cressy et Iohanne vxoris eius etc. Dixit enim quod predictus Thomas et quedam Margeria vxor eius vt de Iure ipsius Margerie tenent de ipsis Willelmo de Gretone et Isabella Willelmo de Cressy et Iohanna vnum messuagium et sexdecim bouatas terre cum pertinenciis in predicta villa de Selstone per homagium fidelitatem et seruicium octo denariorum et vnus paris cyrotecarum albarum per annum Et per seruicium tercię partis feodi vnus militis scilicet ad scutagium domini Regis quadraginta

¹ B, besides a report, gives a more or less corrupt version of the Record.

claimed. You must, then, be in agreement about the land, for the land is the principal cause of these services charged on it.

Scrope. We tell you that we have always been ready to render the services to you and to your parcener and we are still ready.

Denham. We will aver that you never tendered them to us; and we shall be ready to accept them whenever you tender them to us.

Scrope. Where is Margery? The attorney hath avowed for John and John's wife, but no one is here as bailiff for the other defendant. Now you have said that John made acknowledgment as Margery's bailiff, and John is here by attorney. How can a bailiff appoint an attorney? And we tell you further that we have always been ready to pay etc., and we still are ready to render the services to those to whom we ought to render them; but the other defendant, in whose name acknowledgment hath been made by bailiff, is not here in person.

Denham. But it may be that before you can abate our avowry we shall get a writ from the Court to make our parcener come.

Scrope. But if she make default, do you think that we shall render the services? No. And therefore you will not get a summons, but you will have to abide at your peril as you have avowed.

Denham. We will take what the Court will give us.

SCROPE J. He will have a writ to summon his parcener.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), 136d, Nottinghamshire.

William of Gretton was at other time attached by a judicial writ to answer Thomas of Cressy of a plea why he took the beasts of the said Thomas and did unjustly detain them against gage and pledges etc. And in respect thereof the same Thomas, by his attorney, complained that the aforesaid William did on the Saturday that was the vigil of Palm Sunday, in the fourth year of the reign of the lord King that now is, in the vill of Selston, in a certain place that is called Undervill Row, take two horses, the property of the said Thomas, and them unjustly did detain against gage etc. until etc., whereby he saith that he suffered loss and had damage to the value of a hundred shillings. And thereof he produced suit etc.

And William then came by his attorney and denied force and injury when etc. And he did fully admit that on the aforesaid day and year he took the aforesaid beasts both in the name of himself and of a certain Isabel, his wife, and as bailiff of a certain William of Cressy and Joan, his wife, etc. For he said that the aforesaid Thomas and a certain Margery, his wife, as of the right of the same Margery, hold of the said William of Gretton and Isabel, William of Cressy and Joan one messuage and sixteen bovates of land with the appurtenances in the aforesaid vill of Selston by homage, fealty and the service of eight pence and one pair of white gloves every year, and by the service of a third part of the fee of one knight, to wit, to the scutage of the lord King of forty shillings, when it shall occur, thirteen

Note from the Record—*continued.*

solidorum cum acciderit tresdecim solidos et quatuor denarios et ad plus plus et ad minus minus Et faciendi sectam ad Curiam suam de Wandesley de tribus septimanis in tres septimanas De quibus serviciis quidam Ranulphus de Wandesley pater predictorum Isabelle et Iohanne cuius heredes ipse sunt fuit seisisus per manus predictæ Margerie etc. Et quia fidelitas ipsius Margerie et similiter servicium predictarum cyrotecarum per quatuor annos eis aretro fuerunt etc. Idem Willelmus de Grattone pro se et Isabella vxore sua et vt ballius predictorum Willelmi de Cressy et Iohanne cepit vnum equum pro fidelitate etc. et alterum pro areragiis cyrotecarum in predicto loco qui est parcella predictorum tenementorum etc.

Et Thomas dixit quod ipse tenet predicta tenementa tanquam terciam partem manerii de Wandesley que tertia pars est in predicta villa de Selstone vt de Iure predictæ Margerie vxoris sue sine qua non potest predicta seruicia deducere in iudicium Et petiit auxilium etc. Ita quod continuato hinc inde processu etc. vsque a die Pasche in tres septimanas proximo preterite venerunt predicti Willelmus et Thomas Et etiam predicta Margeria per summonicionem etc. Et eadem Margeria iunxit se predicto Thome viro suo in proseguendo etc. Et datus fuit eis dies hic ad hunc diem scilicet a die sancti Michaelis in xv. dies prece parcium etc. Et modo veniunt partes predictæ et Idem Willelmus de Grattone pro se et predicta Isabella vxore sua aduocat predictam capcionem et vt ballius predictorum Willelmi de Cressy et Iohanne vxoris eius ipsam capcionem cognoscit in forma predicta etc.

Et Thomas et Margeria dicunt quod qualitercunque predicti Willelmus de Grattone et Isabella aduocant per numerum bouatarum etc. iidem Thomas et Margeria vt de Iure ipsius Margerie tenent de predictis Willelmo de Grattone et Isabella Willelmo de Cressy et Iohanna terciam partem manerii de Wandeslay cum pertinenciis exceptis duobus messuagiis et aduocacione ecclesie de Selstone et piscariis et viuariis eiusdem manerii tenent etiam vnum messuagium et nouem acras et quartam partem quadraginta acrarum terre et quater viginti acrarum bosci cum pertinenciis in eadem villa de eisdem Willelmo de Grattone et Isabella Willelmo de Cressy et Iohanna scilicet predictam terciam partem manerii cum pertinenciis exceptis etc. et omnia alia tenementa predicta per vnum et Idem servicium tanquam vnitam tenenciam etc. videlicet per servicium supradictum excepta secta et seruicio octo denariorum in aduocaria contentis etc. Et dicunt quod cum predictus Willelmus de Grattone aduocat etc. pro fidelitate et seruicio Cyrotecarum eis aretro existentibus nomine suo et participum suorum in forma predicta Idem Willelmus de Grattone iniuste aduocat etc. Quia dicunt quod ipsi sepius apud Wandeslay ante diem accionis etc. optulerunt eis fidelitatem et seruiciu cyrotecarum pro tertia parte manerii predicti et aliis tenementis que de eis tenent et tenere clamant in predicta villa et adhuc paratus est¹ facere eis eadem seruicia et illa eis offert¹ hic in Curia etc.

¹ These verbs are in the singular probably because they have reference to the attorney personally.

Note from the Record—continued.

shillings and four pence, and when the scutage is more, more, and when less, less, and of doing suit at their Court of Wandesley from three weeks to three weeks; of which services a certain Randal of Wandesley, father of the aforesaid Isabel and Joan, whose heirs they are, was seised by the hands of the aforesaid Margery etc. And because the fealty of the said Margery and likewise the service of the aforesaid gloves remained in arrear to them for four years etc. the same William of Gretton for himself and for Isabel, his wife, and as the bailiff of the aforesaid William of Cressy and Joan took one horse for the fealty etc. and the other for the arrears of the gloves in the aforesaid place which is parcel of the aforesaid tenements etc.

And Thomas said that he holdeth the aforesaid tenements as a third part of the manor of Wandesley, which third part is in the aforesaid vill of Selston, as of the right of the aforesaid Margery, his wife, without whom he cannot bring the aforesaid tenements into judgment, and he asked aid etc.; so that process therein being continued from that day until three weeks after Easter last past the aforesaid William and Thomas came and eke the aforesaid Margery by summon; etc. And the same Margery joined herself with the aforesaid Thomas her husband in suing etc. And a day was given them here on this day, to wit, in the quindenens of St. Michael, *prece parcium* etc. And now the aforesaid parties come; and the same William of Gretton for himself and for the aforesaid Isabel, his wife, avoweth the said taking, and as bailiff of the aforesaid William of Cressy and Joan, his wife, admitteth the said taking in the form aforesaid etc.

And Thomas and Margery say that notwithstanding that the aforesaid William of Gretton and Isabel avow by the number of bovates etc., the same Thomas and Margery, as of the right of the same Margery, hold of the aforesaid William of Gretton and Isabel, William of Cressy and Joan a third part of the manor of Wandesley, with the appurtenances, save two messuages and the advowson of the church of Selston and the fisheries and stews of the same manor; they hold also a messuage and nine acres and the fourth part of forty acres of land and four score acres of woodland, with the appurtenances, in the same vill, of the same William of Gretton and Isabel, William of Cressy and Joan, that is to say [they hold] the aforesaid third part of the manor with the appurtenances, save etc. and all the other tenements aforesaid by one and the same service as a whole tenancy etc., to wit, by the aforesaid service save the suit and the service of eight pence named in the avowry etc. And they say that when the aforesaid William of Gretton doth avow for fealty and the service of gloves in arrear to them in his own name and in that of his parceners in the form aforesaid the same William of Gretton doth make unjust avowry etc., for they say that they did oftentimes at Wandesley before the day of the action etc. tender to them fealty and the service of gloves for the third part of the aforesaid manor and for the other tenements which they hold of them and claim to hold in the aforesaid vill, and they¹ are still ready to render to them the same services; and they¹ proffer them to them here in Court etc.

¹ See the text and footnote.

Note from the Record—*continued*.

Et Willelmus de Grattone protestando pro se et participibus suis quod predicti Thomas et Margeria tenent de eis quicquid tenent in villa predicta non per terciam partem manerii etc. Immo per numerum Bouatarum prout superius in aduocacione sua fit mencio bene defendit quod predicti Thomas et Margeria nunquam optulerunt eis predictam fidelitatem et seruicium prout asserunt Et de hoc ponit se super patriam Et Thomas et Margeria similiter. Et quo ad fidelitatem et seruicium Cyrotocarum que predicti Thomas et Margeria offerunt hic in Curia Dicit quod ipse paratus est seruicia illa admittere si sine participibus suis predictis ad hoc admitti possit Et quia visum est Curie quo ad admissionem fidelitatis et seruicii quod expediens est et necesse quod predicti Willelmus de Cressy et Iohanna nec non Isabella vxor ipsius Willelmi de Grattone participes etc. vocentur etc. preceptum est vicecomiti quod summoneat eos quod sint hic a die sancti Hillarii in xv. dies ad fidelitatem et seruicium illud simul cum predictis Willelmo de Grattone admittendum si etc. Et quia partes predictae quo ad oblacionem eorundem seruiciorum ante diem capcionis etc. pro quibus aduocat etc. superius posuerunt se super patriam etc. Ideo fiat inde Iurata etc. Et preceptum est vicecomiti quod venire faciat hic ad prefatum terminum xij. etc. per quos etc. Et qui nec etc. Quia tam etc. Postea ad diem illum veniunt partes predictae per attornatos suos et similiter predictae Isabella et Iohanna per Rogerum de Baukwell per summonicionem etc. Et de predicto Willelmo de Cressy mandat vicecomes quod mortuus est set predictae Isabella et Iohanna Iungunt se predicto Willelmo de Grattone in hoc placito Et aduocant pro fidelitate etc. vt prius Et Thomas et Margeria dicunt vt prius quod ipsi alias optulerunt etc. Et quia predicti Thomas et Margeria alias venerunt in propria persona parati ad faciendam fidelitatem etc. in forma predicta et licet modo sint parati per quod facere non possunt quod prius pretenderunt Ideo datus est eis dies hic a die sancte Trinitatis in xv. dies Et dictum est attornato predictorum Thome et Margerie quod tunc sint in propria persona etc.

22. PARKER *v.* THE PRIOR OF BLYTHBURGH.¹I.²

Dette demande vers vn Priour par le fait son predeccessour ou feut allegge qil ne poet accioun auoir pur ceo qil nauoit le fait enseale de seale de couuent.

³En vn bref de dette porte vers le priour de C.—

Denum. Quei auietz de la dette.

¹ Reported by *B*, *E*, *M* and *T*. Names of the parties from the Plea Roll.

² Text of (I) from *B* collated with *M* and *T*. ³ *M* and *T* prefix *Nota* qe.

Note from the Record—*continued*.

And William of Gretton, making protestation for himself and his parceners that the aforesaid Thomas and Margery hold of them whatever they do hold in the aforesaid vill not as the third part of the manor etc., but, on the contrary, as a certain number of bovates as is said above in his avowry, wholly denieth that the aforesaid Thomas and Margery did ever tender to them the aforesaid fealty and service as they do assert. And of this he doth put himself upon the country. And Thomas and Margery do the like. And as to the fealty and the service of gloves which the aforesaid Thomas and Margery tender here in Court he saith that he is ready to receive those services if he can be allowed to do this without his parceners aforesaid. And because it doth appear to the Court that for the reception of the fealty and the service it is expedient and necessary that the aforesaid William of Cressy and Joan and also Isabel, wife of the said William of Gretton, parceners etc. be called etc. the Sheriff is ordered to summon them to be here on the quindene of St. Hilary to receive that fealty and service together with the aforesaid William of Gretton, if etc. And because the aforesaid parties did before now put themselves on the country etc. as to the tender, before the day of the seizure, of the same services for which the defendant avoweth etc., therefore a jury etc. is to be impanelled. And the Sheriff is ordered to make come here at the aforesaid term twelve etc. by whom etc., and who neither etc. because both etc. Afterwards on that day the aforesaid parties come by their attorneys, and likewise the aforesaid Isabel and Joan by Roger of Bakewell by summons etc. And in respect of the aforesaid William of Cressy the Sheriff sendeth word that he is dead; but the aforesaid Isabel and Joan join themselves with the aforesaid William of Gretton in this plea and avow for fealty etc. as before. And Thomas and Margery say as before that at other time they tendered etc. And because the aforesaid Thomas and Margery came in person at other time ready to do fealty etc. in the form aforesaid, and though they are now ready to do so, yet because they cannot do what they before offered to do,¹ a day is therefore given them here on the quindene of the Holy Trinity; and the attorney of the aforesaid Thomas and Margery was told that they must be here in person etc.

22. PARKER v. THE PRIOR OF BLYTHBURGH.²

I.

Debt claimed against a Prior in virtue of his predecessor's bond. On behalf of the Prior it was argued that the plaintiff had no right of action under the bond as he had not got it sealed with the seal of the Convent.

In a writ of debt brought against the Prior of C.—
Denham. What have you in proof of the debt?

¹ Thomas and Margery were present now only by their attorney, and fealty could not be done by attorney. ² See the Introduction, page xli. above.

Scrop myst auant vn fait qe voleit qe seon predecessour feut oblige saunz obligeant le couent.

Denum. Le fait qe vous mettetz auant nest mye le fait cesti Priour ne le fait son couent par quei deuers luy etc.

Scrop. Vostre predecessour achata draps et vn chival pur C.s. et obliga soi par ceo fait les queus biens deuendrent en profit de la mesoun¹ et ceo voloms auerier et demaundoms iugement si vous ne deiuetz respoudre.

Denum. Pernelz² au fait et lessetz lauerement ou pernetz a lauerement et wayuetz le fait qe par les ij. ne vous deiuetz aider.

Scrop. Lun affirme lautre et vous dioms qe par le couenaunt³ qe vn cellerer fra ou vn officer en choses qe deuignent en profit de la mesoun si est la mesoun tenue et oblige⁴ par fait.

Denum. Oyl viciaunt ceux qe fomit les contractes par lour fait si est la mesoun obligee mes ne mye apres lour desces qe iammes apres lour desces nest la mesoun oblige par lour escrit si le couent ne ont mys lour ⁵seal etc.⁶

II.⁷

Dette.

Vn A. porta bref de dette vers vn Priour et demaunda .C.s. par la resoun qe vn son predecessour se obliga et cez successors en les auandis .C.s. pur drap a luy vendu et de ceo mist auant fet par la quel il obliga luy et cez successors et dist outre en l'escrit *In cuius rei testimonio sigillum meum apposui.*

Denum. Fet le predecessour ne oblige pas le successor si ceo ne seit par commune seal de la meson et desicom le fet en luy mesme ne suppose mye estre ensele par commune seal fors soulement par le seal le Prior qe pas ne oblige le successor iugement si par cel fet etc.

Scrop. Les biens deiundrent al profit de la mesone en quel cas vous respoudrez iugement.

Berr. Si le celerer ou vn homme de office de la mesone prent chocez qe chetent al profit de la mesone le Prior de ceo respoudra par qey ne respoudriez vous dunke qestes successor la ou vous estes oblige.

¹ mayn, T. ² From M and T; poetz, B. ³ contracte, M, T. ⁴ obligerez, T.
⁵ M omits. ⁶ Text of (II) from E.

Scrope proffered a deed which witnessed that the defendant's predecessor had bound himself without binding the Convent.

Denham. The deed which you tender is not the deed of this Prior nor the deed of his Convent ; and therefore against him etc.

Scrope. Your predecessor bought cloth and a horse for a hundred shillings, and bound himself by this writing, and the said goods were used for the profit of the House ; and we are ready to aver that, and we ask judgment whether you must not answer.

Denham. Take your stand on the deed, and let the averment go, or hold to the averment and waive the deed ; for you are not entitled to avail yourself of both.

Scrope. The one doth support the other ; and we tell you that by any covenant which a cellarer or any official may make touching things which are used for the profit of the House, the House is held and bound by the deed.

Denham. I agree that if they who made the contracts be still alive the House is bound by their deed, but not after their death ; for never after their death will the House be bound by their writing unless they have put their seal etc.

II.

Debt.

One A. brought a writ of debt against a Prior and claimed a hundred shillings because a predecessor of the Prior had bound himself and his successors in the aforesaid hundred shillings for cloth sold to him ; and the plaintiff proffered in witness thereof a deed by which the Prior had bound himself and his successors ; and the writing contained also the words ' In witness whereof I have set hereunto my seal.'

Denham. The predecessor's deed doth not bind his successor unless it be under the common seal of the House ; and since the deed doth not in itself purport to be sealed with the common seal, but only with the seal of the Prior which doth not bind his successor, judgment whether by this deed etc.

Scrope. The goods were used for the profit of the House, and in that case you must answer. Judgment.

BEREFORD C.J. If the cellarer or anyone holding office in the House take things which go to the profit of the House, the Prior will be answerable therefor. Why, then, should not you, who are the successor, answer where you are bound ?

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 126d, Suffolk.

Prior beate Marie de Blyburghe in misericordia pro pluribus defaultis etc.

Idem Prior summonitus fuit ad respondendum Henrico le Parker de placito quod reddat ei centum solidos quos ei debet et iniuste detinet etc. Et vnde Idem Henricus per Iohannem Parles attornatum suum dicit quod cum quidam Nicholaus le Parker quondam Prior de Blyburghe predecessor istius Prioris die sancti Andree Apostoli anno regni domini Regis nunc secundo apud Blyburghe per scriptum suum obligasset se et successores suos ipsi Henrico in predictis centum solidis pro vno equo nigro et vno panno de lanea integro ab eodem Henrico emptis ad proficuum ecclesie sue predice soluendis eidem Henrico in festo Purificacionis beate Marie tunc proximo sequente predictus Nicholaus quondam Prior etc. in vita sua predictos denarios eidem Henrico non reddidit et predictus Prior nunc licet sepius fuisset inde requisitus denarios illos ei hucusque reddere contradixit et adhuc reddere contradicit vnde dicit quod deterioratus est Et dampnum habet ad valenciam quadraginta solidorum Et inde producit sectam etc. Et profert hic predictum scriptum sub nomine predicti Nicholai quondam Prioris etc. predecessoris etc. quod predictum debitum testatur in forma predicta etc.

Et Prior per Thomam de Sibetone attornatum suum venit Et defendit vim et iniuriam quando etc. Et super hoc dies datus est hic a die sancti Hillarii in xv. dies prece parcium sine essionio etc. Ad quem diem veniunt partes predice Et super hoc Dies datus est cis hic a die sancte Trinitatis in xv. dies prece parcium sine essionio etc.

23. NOYERS *v.* THE PRIOR OF ST. FRIDESWIDE'S, OXFORD.¹

Annuee ou illege [*sic*] fut presentement de benefice.

Robert de Northwode porta son bref de annuee vers le Prior de Seynt Fremd [*sic*] de Oxonford et demaunda xxiiij. mars de vne rente annuel de deux mars par an et myt auaunt fet qe testmoigne qe vn R. predecessour etc. et le couent auaient graunte a ly deux mars par an a prendre etc. iour et len etc. quousque dictus prior et conuentus sibi de competenti beneficio prouiderit.

Russel. Nous vous dioms qe le iour seynt Martyn etc. en la eglise de seynt Ford. [*sic*] nous vous presentames al eglise de seynt Michel a la porte de Southnextone [*sic*] quel presentement vous refusastes et demaundoms iugement.

¹ Reported by *D* only. Names of the parties from the Plea Roll.

Note from the Record.

De Banco Roll. Mich., 8 Edw. II. (No. 207), r. 126d. Suffolk.

The Prior of Blessed Mary of Blythburgh in mercy for several defaults etc.

The same Prior was summoned to answer Harry the Parker of a plea that he render to him a hundred shillings which he oweth to him and unjustly detaineth etc. And thereof the same Harry by John Parles, his attorney, saith that whereas a certain Nicholas the Parker, aforetime Prior of Blythburgh, predecessor of this Prior at Blythburgh, on the Day of St. Andrew the Apostle in the second year of the reign of the King that now is by his writing bound himself and his successors to this same Harry in the aforesaid hundred shillings for one black horse and one whole piece of wool, bought of the said Harry for the profit of his aforesaid church, [the said hundred shillings] to be paid to the same Harry on the Feast of the Purification of Blessed Mary then next following, the aforesaid Nicholas, aforetime Prior etc., did not during his lifetime pay the aforesaid money to the same Harry, and the aforesaid Prior that now is, although he hath been oftentimes asked to do so, hath up to now refused to pay those moneys and still doth refuse to pay them; whereby [the same Harry] saith that he hath suffered loss and hath damage to the amount of forty shillings. And thereof he produceth suit etc. And he proffereth here the aforesaid writing under the name of the aforesaid Nicholas, aforetime Prior etc., predecessor etc., which witnesseth the aforesaid debt in the form aforesaid etc.

And the Prior by Thomas of Sibton, his attorney, cometh and denieth force and injury when etc. And thereupon a day is given them here on the quindene of St. Hilary *prece parcium*, without essoin etc. On which day the aforesaid parties come, and thereupon a day is given them here on the quindene of the Holy Trinity *prece parcium*, without essoin etc.

23. NOYERS v. THE PRIOR OF ST. FRIDESWIDE'S, OXFORD.¹

Writ of Annuity, where it was pleaded that the plaintiff had been offered a benefice.

Robert of Noyers² brought his writ of annuity against the Prior of St. Frideswide's of Oxford, and claimed twenty-four marks, [being the arrears] of an annual rent of two marks a year; and he tendered a deed which witnesseth that one R., predecessor etc., and the Convent had granted to him two marks a year to be received etc. on such a day and in such a place etc. until the said Prior and Convent provide him with a sufficient benefice.

Russell. We tell you that on Martinmas Day etc., in the church of St. Frideswide, we presented you to the church of St. Michael by the south gate of Oxford, which presentation you refused, and we ask judgment.

¹ See the Introduction, p. xlii. above. modern form of the plaintiff's name is

² Corrected from the Record. The Nourse.

Migg. Bien est verite qil nous presenta mes nous vous dioms qe la eglise ne vaut pas par an xl. s. et demaundoms iugement depus q' le especialte veot competens beneficium si par la tendre de cel eglise nous poet il barrer.

Russel. Nous demaundoms iugement desicom vous auez conu le presentement etc. et par taunt lannuete esteynt.

Scrope Iustice. Nous auoms regard a la persone qe porte le bref et a la value de la eglise par an dount a estendre lannuete de deux mars etc. par vn benefice de xl. s. ou il couent estre infra sacros [ordines] et auer Cure des almes il couent qe vous respoigniez outre.

Russel. La eglise vaut x.li. prest etc.

Et [alii] econtra.

Migg. Vnqore couent demorer en vos iugements si presentement a cel eglise seit couenable mesqe troue seit qe la eglise vaut x.li. etc. a homme de cel estat del hure qe lannuete est deux mars par an etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 309d, Oxfordshire.

Prior sancte Fredeswyde Oxonie summonitus fuit ad respondendum Willelmo de Nowers de placito quod reddat ei viginti et quatuor marcas que ei a retro sunt de annuo redditu duarum marcarum quem ei debet etc. Et vnde Idem Willelmus per Willelmum de Colshull attornatum suum dicit quod cum quidam Robertus quondam Prior sancte Fredeswyde predecessor etc. et eiusdem loci conventus die sancti Martini Episcopi et confessoris anno regni domini Regis Edwardi patris domini Regis nunc decimonono apud Oxoniam in capitulo predictorum Prioris et Conventus per scriptum suum dederunt et concesserunt ipsi Willelmo duas marcas de camera sua singulis annis percipiendas ad duos anni terminos videlicet in quindena Pasche vnam marcam et in Crastino Animarum vnam marcam soluendas eidem Willelmo vel suo procuratori ad hoc specialiter assignato in monasterio sancte Fredeswyde quousque eidem Willelmo in competenti beneficio per ipsos Priorem et conventum fuerit prouisum etc. predictus Prior nunc predictas viginti et quatuor marcas ante diem impetracionis breuis etc. siliet [sic] ante octauum diem Februarii anno regni domini Regis nunc septimo ipsi Willelmo licet sepius fuisset inde requisitus detinuit et illas ei adhuc reddere contradicit vnde dicit quod deterioratus est Et dampnum habet ad valenciam viginti marcarum Et inde producit sectam Et profert

Migeley. Very true it is that he presented us, but we tell you that the church is not worth forty shillings a year, and we ask judgment whether he can bar us by the offer of that church, seeing that the specialty provideth for a sufficient benefice.

Russell. We ask judgment since you have admitted the presentation etc., the annuity being thereby extinguished.

SCROPE J. We have regard to the person who bringeth the writ and to the yearly value of the church. You must, then, make further answer if you want to extinguish the annuity of two marks etc. by a benefice of forty shillings, seeing that the plaintiff must be in holy orders and have the cure of souls.

Russell. The church is worth ten pounds; ready etc.

And the other side joined issue.

Migeley. We must still abide your judgment whether the presentation to this church be a sufficient one, even though it be found that it is worth ten pounds etc., for a man of the plaintiff's position,¹ since the annuity is two marks a year etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 309d, Oxfordshire.

The Prior of St. Frideswide's at Oxford was summoned to answer William of Noyers of a plea that he render to him twenty and four marks which are in arrear to him of an annual rent of two marks which the Prior oweth him etc. And thereof the same William by William of Coleshill, his attorney, saith that whereas a certain Robert that was aforetime Prior of St. Frideswide's, predecessor etc., and the Convent of the same place, on the Day of St. Martin, Bishop and Confessor, in the nineteenth year of the reign of the lord King Edward, father of the lord King that now is, did at Oxford in the Chapter of the aforesaid Prior and Convent by their writing give and grant to the same William two marks yearly to be received from their chamber² at two terms in the year, to wit, on the quindene of Easter one mark and on the Morrow of [All] Souls one mark, to be paid to the same William or to his proctor, specially appointed for the purpose, in the monastery of St. Frideswide until a sufficient benefice had been provided etc. for the same William by the said Prior and Convent, the aforesaid Prior that now is did detain before the purchase of the writ etc., to wit, before the eighth day of February in the seventh year of the reign of the lord King that now is from this same William, though he was oftentimes asked to pay them, the aforesaid twenty and four marks, and he hath up to now refused to pay them, whereby the same William saith that he hath suffered loss and hath damage to the amount of twenty marks. And thereof he produceth suit, and

¹ We learn from the Record that the plaintiff was a Master of Arts and the son of a knight.

² For these cameral annuities see Pollock and Maitland, *History of English Law* (2nd edit.), ii. 132.

Note from the Record—*continued*

hic predictum scriptum sub nomine predictorum Prioris et conuentus quod predictum annuum redditum testatur in forma predicta etc.

Et Prior, per Willelmum de Merstone attornatum suum venit Et defendit vim et iniuriam quando etc. Et bene cognoscit predictum scriptum esse factum predicti Roberti quondam Prioris predecessoris etc. set dicit quod predictus Willelmus virtute illius scripti nichil exigere potest ab eodem Priore de predicto annuo redditu etc. Quia dicit quod cum in predicto scripto continetur quod predictus Prior predecessor etc. concessisse et dedisset predicto Willelmo predictum annuum redditum percipiendum etc. quousque eidem Willelmo de competeuti beneficio per ipsos Priorem et conuentum fuisset prouisum Idem Prior nunc die Lune proxima post festum sancti Michaelis anno regni domini Edwardi Regis patris domini Regis nunc Tricesimo primo apud Oxoniam in presencia Iohannis de Trillawe et Magistri Willelmi de Kendale optulit predicto Willelmo presentacionem ad ecclesiam Sancti Michaelis uersus portam Australem Oxonie que tunc vacauit et ad ipsius Prioris spectat donacionem et quod est beneficium competens pro predicto Willelmo et valet per annum decem libras quamquidem presentacionem predictus Willelmus admittere recusauit Et hoc paratus est verificare vnde petit iudicium etc.

Et Willelmus bene cognoscit quod predictus Prior nunc optulit ei presentacionem ad predictam ecclesiam etc. set dicit quod ecclesia illa non est beneficium competens pro ipso Willelmo maxime cum Idem Willelmus sit Magister artium et filius Rogeri de Nowers militis dicit enim quod ecclesia illa non valet decem libras per annum sicut predictus Prior dicit Et hoc petit quod inquiratur per patriam Et Prior similiter Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Hillarii in xv. dies xij. etc. per quos etc. Et qui nec etc. ad recognizandum etc. Quia tam etc.

24. WHITTLESEY AND SEDGEFORD v. LAURENCE.¹I.²

Vn Ion et Alisandre porterent bref dentre vers vn Thomas et dit en les queux Thomas nad entre si noun pus le lees qe Ameys lour Ael de ceo enfit tancum ele fut de noun seyne memorie.

Prilli. Quant a Ion accioun ne put Ion auoir qe veez cy le fet Ion soun pere qe obliga ly et sez heirs a la garrauntie iugement si accioun put il auoir.

Burton. Le bref veot en Lextone et lespecialte en lexcigworde et issi est le fet variant a nostre bref iugement.

¹ Reported by *C* and *D*. Names of the parties from the Plea Roll. This is Fitzherbert, *Garunt de Chartres*, case 81, f. 38b. ² Text of (1) from *C*.

Note from the Record—continued.

proffereth here the aforesaid writing under the name of the aforesaid Prior and Convent, which doth witness the aforesaid yearly rent in the form aforesaid etc.

And the Prior by William of Marston, his attorney, cometh and denieth force and injury when etc., and he doth fully acknowledge the aforesaid writing to be the deed of the aforesaid Robert, aforetime Prior, predecessor etc., but he saith that the aforesaid William [of Noyers] cannot, by virtue of that writing, claim aught from this Prior of the aforesaid yearly rent etc.; for he saith that whereas it is contained in the aforesaid writing that the aforesaid Prior, predecessor etc. granted and gave to the aforesaid William the aforesaid yearly rent to be received etc. until a sufficient benefice had been provided for the same William by the said Prior and Convent, the same Prior that now is did on the Monday next after the Feast of St. Michael in the thirty-first year of the reign of the lord King Edward, father of the lord King that now is, at Oxford in the presence of John of Trillawe and Master William of Kendal, offer to the aforesaid William the presentation to the church of St. Michael opposite the south gate of Oxford, which was then void and was regardant to the gift of the same Prior, and is a sufficient benefice for the aforesaid William and is worth ten pounds a year; which presentation the aforesaid William refused to accept. And he is ready to aver this, and thereof he asketh judgment etc.

And William doth fully admit that the aforesaid Prior that now is did offer to him the presentation to the aforesaid church etc., but he saith that that church is not a sufficient benefice for him, William, especially as the same William is a Master of Arts and son of Roger of Noyers, knight; for he saith that that church is not worth ten pounds a year as the aforesaid Prior doth say, and he asketh that this may be inquired of by the country. And the Prior doth the like. So the Sheriff is ordered to make come here on the quindene of St. Hilary twelve etc., by whom etc., and who are neither etc., to make recognition etc., because both etc.

24. WHITTLESEY AND SEDGEFORD *v.* LAURENCE.¹

I.

One John and Alexander brought their writ of entry against one Thomas, and said that Thomas had not entry into the tenements claimed save after the lease which Amice their grandmother made thereof when she was of unsound memory.

Prilly. As to John, John cannot have action, for see here the deed of John his father, who bound himself and his heirs to the warranty. Judgment whether John can have action.

Burton. The writ saith in Laxton and the specialty saith in Lexcigworde, and so the deed differeth from our writ. Judgment.

¹ See the Introduction, p. xlii. above.

Prill. Lexeigworthe est vn assart en Lextone et nous voloms auer qe mesmes loz tenementz passerent par my le doun.

Bortone. Nous demaundoms par my le sank la mere descendi a nous ou il ne nous put barrer par nul fet nostre pere par my qi rens nous est descendu et demaundoms iugement.

Prill. A la comune ley le sank fut barre la quel ley nest pas restreint si noun en cas de statut ou le heir demaunde le heritage sa femme ou la mariage par bref de possessioun cum daele Besaele cosinage qe le pere alicne viuant la mere mez vostre bref est vn bref de dreit et issint hors de cas de statut et demaundoms iugement.

Berr. Tant amounte vostre respouns qe la ou il demaunde com heir sa mere il serra barre par le fet soun pere par my qi nul heritage ly est descendu quod falsum est respoudez sil ad riens par descent.

Bortone. Nous nauoms rens par descent.

Prilli. Assez vous fut descendu mez vous auez aliene.

Bortone. Le iour de bref purchase nous nauyms rens prest etc.

Berr. Si vous auez par descent quidez vous recouer quasi diceret non care mesme la ley qe vous barre si vous fuissez a vostre accioun quant vous fuistez seisi dez tenementz qe vous fuerunt descenduz mesme la ley vous barre quant a ore.

Bortone. Rens nous fut descendu prest etc.

Et alii econtra. Et quant a Alexandre il voucha etc.

II.¹

Alexaundre et vn son cosyn porterent etc. uers Ion de S. et demaunderent certeynz tenementz en Hyslyng de la seisine Angnes lour auncestre qe fut seisi en son demene com de fee et de dreit et firent la decente de Angnes pur ceo qe le morut etc. descendirent etc. a M. A. et C. [com] a soers etc. de C. pur ceo qe etc. a M. et a A. com a socre etc. de A. decendi etc. a Alexaundre com a fitz etc. qore demaunde ensemblement ou Iohan et diseyent en les queus il nad entree

¹ Text of (II) from *D.*

Prilly. Lexceigworthe is an assart¹ in Laxton, and we will aver that it was these same tenements which passed under the grant.

Burton. We claim the tenements as descended to us in right of our mother, so that he cannot bar us by any deed of our father from whom naught hath descended to us; and we ask judgment.

Prilly. By the common law the blood [of the father] was barred, and that bar is removed by statute² only in the case where the heir is claiming by a possessory writ, such as ael, besael or cosinage, the heritage of his wife or [land granted in frank]n marriage which her father alienated during her mother's lifetime, but your writ is a writ of right and so doth not come within the provisions of the statute, and we ask judgment.

— *BEREFORD C.J.* Your answer amounteth to this, that where a man claimeth as his mother's heir he will be barred by the deed of his father although the estate of inheritance hath descended to him from his father; and that is not true. Say whether he hath aught by descent.

Burton. We have naught by descent.

Prilly. You had assets by descent but you have alienated them.

Burton. We had naught on the day of the purchase of the writ; ready etc.

BEREFORD C.J. If you had aught by descent, think you that you will recover?—*intimating that he would not*—for that same law which would bar you if you were bringing an action, that same law will bar you now in the case that you were seised of tenements which had descended to you.

Burton. Naught descended to us; ready etc.

And the other side joined issue. And as for Alexander, he vouched etc.

II.

Alexander and one who was his cousin brought etc. against John of S. and claimed certain tenements in Islington³ of the seisin of Agnes their ancestor who was seised in her demesne as of fee and right; and they made the descent from Agnes; because she died etc. descended etc. to M., A. and C. as sisters etc. From C., because etc., to M. and to A. as sisters etc. From A. [her share] descended to Alexander, as son, who now claimeth together with John; and they say that [John of S.] had no entry into the said tenements save after the lease which

¹ An 'assart' was a piece of forest land converted into arable by grubbing up the trees and brushwood.

² Statute of Gloucester, cap. iii.

³ Islington is near Lynn in Norfolk.

si noun pus le lees qe mesme cesti Angnes en fit a W. de Heybryge taunt com ele fut en noun seyn memorie.

Ingh. dit qe qant a Alexaundre il ne put rien demaunder qe nous vous dioms qe son pere nous enfeffa de mesme les tenementz et obliga luy et ces heirs a la garauntie et si nous fuissoms enplede etc. vous nous garauntisastes iugement etc. et qant a lautre moite nous vochoms a garauntie mesme cest Alexaundre qe serra somouns etc.

Cauntebr. pur Alexaundre. Nous conisoms le fet mes nous vous dioms qe rien nous est descendu par my ly iugement etc.

Ingh. Vous nestes pas en cas de statut eynz a la comune ley qe statut de Gloucestre veot la ou mon pere tynt par la ley Dengleterre et aliene etc. et oblige etc. le heir la femme porte le mordancestor apres sa mort le baron le heir ne seit pas barre si rien ne ly seit descendu par le fet son pere en mesme la manere ne seit le heir etc. ou son cosyn etc. sil demaunde par bref de cosynage Ael ou besael etc. mes ore dioms nous qil ne tynt vnqes ceux tenementz par la ley Dengleterre issi hors de cas de statut qil demaunde par bref dentre issint etc.

Burt. A la comune ley il fust barre en lun cas et lautre mes ore ley comune est restreynt par statute par qei etc.

Berr. Mesqe il fut en vn bref de dreit il ne serra pas barre si ascun chose ne ly fut descendu pur cel respoundez sil fut del heritage sa miere ou noun.

Ingh. Nous vous dioms qil auoit assez par descence apres la mort son piere prest etc.

Burt. Nous nauoms rien par descence prest etc.

Berr. Vous auiez assez par cas et vous le auiez par collucioun aliene pur vous esturtre de la garauntie et pur ceo vous respoundrez si vous auez rien par descence ou noun.

Burtone. Nous nauoms rien par descence prest etc. et qant a la voucher estoyse etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 335. Norfolk.

Alexander de Wytteseye et Iohannes filius Alani de Secceforde per Iohannem de Seynlyz attornatum suum optulerunt se iiij. die versus Godfridum filium Radulfi Laurence de placito vnus acre terre cum pertinenciis in Ilsingtone quam clamant vt Ius etc. Et ipse non venit Et alias fecit

that same Agnes made thereof to W. of Heybridge when she was of unsound memory.

Ingham, as to Alexander, said that he could claim naught, for we tell you that his father enfeofed us of these tenements and bound himself and his heirs to the warranty; and if we should be impleaded you would have to warrant us. Judgment etc. And, as to the other moiety, we vouch to warranty this same Alexander, who will be summoned etc.

Cambridge, for Alexander. We admit the deed, but we tell you that naught hath descended to us from our father. Judgment etc.

Ingham. You are not within the provisions of the statute,¹ but are under the common law; for the Statute of Gloucester provideth that where my father holdeth by the law of England and alienateth and bindeth etc., and the heir of his wife bringeth the mortdaneestor after the death of the husband, the heir shall not be barred by the deed of his father if naught have descended to him. In like manner the heir is not etc. where his cousin etc., if he claim by a writ of cosinage, ael or besael etc.; but here we tell you that [Alexander's father] never held these tenements by the law of England, and so you are outside the statute and so cannot claim by a writ of entry; wherefore etc.

Burton. By the common law the son was barred in both cases, but now the common law is modified by statute; therefore etc.

BEREFORD C.J. Though this were a writ of right yet he would not be barred if naught had descended to him; and so answer whether this was the heritage of his mother or not.

Ingham. We tell you that he had assets by descent after the death of his father. Ready etc.

Burton. We have naught by descent. Ready etc.

BEREFORD C.J. Peradventure you had assets and have collusively alienated them in order that you might escape warranting; and therefore you must answer whether you had aught by descent or not.

Burton. We have naught by descent; ready etc. And as to the voucher, let it stand etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 325. Norfolk.

Alexander of Whittlesey and John, son of Alan of Sedgford, by John of Seynlyz,² their attorney, offered themselves on the fourth day against Godfrey, son of Ralph Laurence, of a plea of one acre of land with the appurtenances in Islington³ which they claim as their right etc. And Godfrey did not come. And at other time he made default here, to wit, on the

¹ Statute of Gloucester, cap. iii.

form is Senciz.

² ? Shauklin, of which the Domesday

³ Islington is near Lynn in Norfolk.

Note from the Record—continued.

defaltam hic scilicet in Crastino sancti Iohannis Baptiste proximo preterito postquam summonitus etc. Ita quod tunc preceptum fuit vicecomiti quod caperet predictam acram terre in manum domini Regis etc. Et diem etc. Et quod summoneret eum quod esset hic ad hunc diem scilicet in octabis sancti Martini etc. Et vicecomes modo mandat diem capcionis etc. Et quod summonuisset etc. Et super hoc venit quidam Robertus filius Willelmi Hereward et dicit quod predictus Godefridus tenet predictam terram ad terminum vite sue ex dimissione eiusdem Roberti et quod post mortem ipsius Godefridi ad ipsum Robertum spectat ius et [*sic*] reuersionis eiusdem terre et petit quod per defaltam ipsius Godefridi non amittat inde ius suum etc. set ad defensionem iuris sui in hac parte admittatur et admittitur etc.

Et Alexander et Iohannes petunt predictam acram terre cum pertinenciis versus predictum Robertum vt ius etc. et in quam idem Godefridus non habet ingressum nisi post dimissionem quam Agnes de Wytleseye auia predictorum Alexandri et Iohanis cuius heredes ipsi sunt dum non fuit compos mentis sue inde fecit Rogero de Wytleseye etc. Et vnde iidem Alexander et Iohannes dicunt quod predicta Agnes auia etc. fuit seisita de predicta terra in dominico suo vt de feodo etc. tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo inde explecias ad valeuciam etc. Et de ipsa Agneta descendit ius etc. quibusdam Iuliane Lecie et Agnete vt filiabus et heredibus etc. Et de ipsa Agnete quia obiit sine herede de se descendit ius propartis sue etc. predictis Iuliane et Lecie vt sororibus et heredibus etc. Et de ipsa Iuliana descendit ius propartis sue etc. isti Alexandro qui nunc petit simul etc. vt filio et heredi etc. Et de ipsa Lecia descendit ius propartis sue etc. isti Iohanni qui nunc petit simul etc. vt filio et heredi etc. Et in quam etc. Et inde producunt sectam etc.

Et Robertus defendit ius suum quando etc. Et quo ad medietatem predicte terre etc. dicit quod predictus Alexander nichil iuris clamare potest in eadem medietate etc. Quia dicit quod quidem [*sic*] Rogerus de Wytleseye pater predicti Alexandri cuius heres ipse est fuit seisitus de tota predicta terra etc. qui terram illam simul eum aliis tenementis de seisina sua dedit predicto Willelmo patri ipsius Roberti cuius heres ipse est tenendam sibi et heredibus et assignatis suis etc. et obligauit se et heredes suos ad warantizandum etc. vnde dicit quod si ipse ab aliquo extraneo inde implacitatus fuisset predictus Alexander teneretur ei predictam terram warantizare etc. et profert cartam predicti Rogeri patris etc. que predictam [*sic*] donum et warantiam testatur in forma predicta etc. vnde petit iudicium si eidem Alexandro contra factum predicti Rogeri patris etc. cuius heres ipse est accio competere debeat in hac parte etc. Et quo ad aliam medietatem

Note from the Record—continued.

Morrow of St. John the Baptist last past after that he had been summoned etc., so that the Sheriff was now ordered to take the aforesaid acre of land into the King's hand etc., and the day etc.,¹ and to summon Godfrey to be here on this day, to wit, on the octave of St. Martin etc. And the Sheriff now returneth the day of the taking etc., and that he had summoned etc. And thereupon cometh a certain Robert, son of William Hereward, and saith that the aforesaid Godfrey holdeth the aforesaid land for the term of his life by the lease of him, Robert, and that after the death of the same Godfrey the right in the reversion of the same land is regardant to him, Robert; and he asketh that he may not lose his right therein by the default of the said Godfrey, but may in these circumstances be received to defend his right; and he is received etc.

And Alexander and John claim the aforesaid acre of land with the appurtenances against the aforesaid Robert as the right etc., and into which the same Godfrey hath not entry save after the lease which Agnes of Whittlesey, grandmother of the aforesaid Alexander and John, whose heirs these be, made thereof, while she was of unsound mind, to Roger of Whittlesey etc., and of which the same Alexander and John say that the aforesaid Agnes, grandmother etc., was seised of the aforesaid land in her demesne as of fee etc. in time of peace in the time of the lord King Edward, father of the lord King that now is, taking esplees thence to the value etc. And from that same Agnes the right etc. descended to a certain Gillian, Lecia and Agnes as daughters and heirs etc. And from that Agnes, because she died without heir of her body, the right in her share etc. descended to the aforesaid Gillian and Lecia as sisters and heirs etc. And from that Gillian the right in her share etc. descended to this Alexander, who now claimeth together with etc., as son and heir etc. And from that Lecia the right in her share etc. descended to this John, who now claimeth together with etc., as son and heir etc. And into which etc. And thereof they produce suit etc.

And Robert denieth the right of Alexander and John when etc. And as to a moiety of the aforesaid land etc. he saith that the aforesaid Alexander cannot claim any right in the same moiety etc.; for he saith that a certain Roger of Whittlesey, father of the aforesaid Alexander, whose heir Alexander is, was seised of the whole of the aforesaid land etc., and that out of his seisin he granted that land together with other tenements to the aforesaid William, father of this Robert, whose heir Robert is, to hold to himself and his heirs and assigns etc. and bound himself and his heirs to warrant etc., and thereby, he saith, if he should be implicated thereof by a stranger the aforesaid Alexander would be bound to warrant to him the aforesaid land etc.; and he proffereth a charter of the aforesaid Roger, father etc., which witnesseth the aforesaid grant and warranty in the aforesaid form etc.; and thereof he asketh judgment whether any right of action in these circumstances ought to accrue to the same Alexander against the tenor of the deed of the aforesaid Roger, father etc., whose heir he is. And as to the other moiety

¹ i.e. to certify the Court of the day when he took possession of the land.

Note from the Record—continued.

predicte acre terre quam predictus Iohannes clamat tanquam propriam etc. idem Robertus vocat inde ad warrantandum predictum Alexandrum habeat eum hic a die Pasche in vnum mensem per auxilium Curie etc. Et sum-moneatur in eodem comitatu etc.

Et Alexander quo ad illam medietatem quam ipse clamat tanquam propriam etc. dicit quod ipse ab agendo in hac parte precludi non debet etc. dicit enim quod ipse petit medietatem illam de seisina predictæ Agnetis auie etc. vt predictum est et non de seisina predicti Rogeri patris etc. per cuius factum predictus Robertus nititur ipsum ab accione repellere etc. Et dicit quod in statuto edito apud Gloucestriam continetur quod si vir alienet tenementa que sunt ius vxoris sue habeat heres huiusmodi vxoris post mortem viri et vxoris accionem petendi huiusmodi tenementa alienata per patrem eiusdem heredis licet in carta patris etc. predicto dono mencionem faciat quod idem donator et heredes sui inde obligantur ad warrantandum etc. dum tamen hereditas de eodem patre eidem heredi non descenderit etc. Dicit reuera quod ipse nunquam aliquid habuit per descensum hereditarium de predicto Rogero patre etc. Et hoc paratus est verificare etc. Et ex quo ipse habeat eandem accionem ad petendam medietatem qua per predictum statutum in casu consimili conceditur etc. petit iudicium etc.

Et Robertus dicit quod predictus Alexander habuit terras et tenementa ad sufficienciam in predicta villa de Hsyngtone que ei descenderunt hereditarie de predicto Rogero patre etc. Et de hoc ponit se super patriam. Et Alexander similiter etc. Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in vnum mensem xij. etc. per quos etc. et qui nec etc. ad recognizandum etc. Quia tam etc. Et predictus Robertus posuit loco suo Robertum de Shuldham versus predictos Alexandrum et Iohannem de predicto placito etc. Postea ad diem illum veniunt tam predicti Alexander et Iohannes quam predictus Robertus per attornatos ipsorum Iohannis et Roberti quam predictus Alexander filius Rogeri quem etc. per summonicionem etc. Et idem Alexander filius Rogeri petit sibi ostendi per quod debeat eidem Roberto warrantizare etc. Et idem Robertus profert predictam cartam sub nomine predicti Rogeri patris ipsius Alexandri que predicta donum et waranciam testatur in forma predicta etc.

Et Alexander bene cognoscit predictam cartam esse factam predicti Rogeri cuius heres ipse est sanguine set dicit quod ipse nullas habet terras seu tenementa per descensum etc. de eodem Rogero et tanquam heres nichil habens etc. ei warrantizavit etc. et per licenciam reddidit predicto Iohanni filio Alani predictam medietatem etc. Ideo habeat inde seisinam suam etc.

Et Robertus dicit quod predictus Alexander in octabis sancti Martini

Note from the Record—continued.

of the aforesaid acre of land which the aforesaid John claimeth as the share etc. the same Robert voucheth to warranty thereof the aforesaid Alexander. He is to have him here by the aid of the Court etc. a month after Easter. And he is to be summoned in the same county etc.

And Alexander, as to that moiety which he claimeth as the share etc., saith that he ought not in these circumstances to be barred from his right of action etc., for he saith that he is claiming that moiety of the seisin of the aforesaid Agnes, grandmother etc., as is aforesaid, and not of the seisin of the aforesaid Roger, father etc., by whose deed the aforesaid Robert is seeking to rebut him from his action etc. And he saith that in the statute promulgated at Gloucester it is provided that if a man alienate tenements which are the right of his wife, the heir of a wife in such case shall, after the death of the husband and wife, have his action to claim tenements of this kind alienated by the father of the same heir notwithstanding that in the father's charter etc. of the aforesaid grant it is said that the same grantor and his heirs are bound to the warranty thereof etc., provided that no estate of inheritance shall have descended from the same father to the same heir etc. He saith that in truth he hath never had aught by hereditary descent from the aforesaid Roger, father etc. And he is ready to aver this etc. And because he hath the same right of action to claim [the other] moiety, by the granting by the same statute of writs in like case etc., he asketh judgment etc.

And Robert saith that the aforesaid Alexander had sufficient lands and tenements in the aforesaid vill of Islington which descended to him as heir from the aforesaid Roger, father etc. And of this he putteth himself upon the country. And Alexander doth the like etc. Therefore the Sheriff is ordered to make come here a month after Easter twelve etc. by whom etc. and who neither etc. to make recognition etc., because both etc. And the aforesaid Robert put Robert of Shulldham in his place against the aforesaid Alexander and John in the aforesaid plea etc. Afterwards, on that day, come both the aforesaid Alexander and John and the aforesaid Robert by the attorneys of the said John and Robert, and the aforesaid Alexander,¹ son of Roger, whom etc., by summons etc. And the same Alexander son of Roger asketh that it may be shown him by what he is bound to warrant the same Robert etc. And the same Robert proffereth the aforesaid charter under the name of the aforesaid Roger, father of this same Alexander, which witnesseth the aforesaid grant and warranty in the form aforesaid etc.

And Alexander doth fully admit the aforesaid charter to be the deed of the aforesaid Roger, whose heir he is by blood, but he saith that he hath no lands or tenements by descent etc. from the same Roger; and, as heir that hath taken naught, he warranted Robert etc., and by licence he surrendered to the aforesaid John, son of Alan, the aforesaid moiety etc. So John is to have his seisin thereof etc.

And Robert who vouched the aforesaid Alexander to warranty etc. saith

¹ Alexander comes in two capacities, as claimant and as vouchee.

Note from the Record—continued.,

proximo preteritis qui vocavit ipsum ad warantizandum etc. habuit terras et tenementa ad sufficienciam apud Ilsingtone per descensum etc. de eodem Rogero Et de hoc ponit se super patriam et Alexander similiter Ideo preceptum est vicecomiti quod venire faciat hic a die sancti Michaelis in tres septimanas xij. etc. Quia tam etc. Ad quem diem venit predictus Robertus per attornatum suum et optulit se iij. die uersus predictum Alexandrum filium Rogeri de predicto 'placito medietatis etc. quam ipsi Roberto warantizavit et postmodum reddidit etc. Et ipse non venit nec expectat verificacionem quam prius pretendebat etc. Ideo consideratum est quod predictus Robertus habeat de terra predicti Alexandri filii Rogeri ad valenciam etc.

25. CLEASBY v. APPLGARTH.¹I. ²

Anable qe fut la femme Robert de Clesseby porta soun cui in vita vers Thomas de Appellgarde et demanda certeinz tenementz en Merske et en Richemonde.

Treuen. Nous auoms rienz en ceux tenementz si noun iointement oue Cecile nostre femme nient nome en bref iugement du bref et myst auant vn fyn qe testmoynna qe vae Isabel graunta et rendy mesmes lez tenementz a Thomas et a Cecille et a lez heirz de lour cors engendrez.

Denom. La fyn suppose qe vous estez entre par Isabel et nostre bref veot qe vous estez entre par nostre baroun issy est ceo a trauers a nostre entre par qei nous voloms auerer nostre bref.

Treuen. Vous nauez pas tenant en vostre bref qe put vostre demande rendre pur ceo qe la femme ad auxi auunt tenanz com nous cum la fyn proue par qei vostre bref est malueys.

Denom. Si ieo nomasse la femme oue le baroun et le baroun fait defaute apres defaute ele serra resceu a defendre soun dreyt et dirreit qe ele nentra mye par le baroun et issy nous ostreit ele de ceste bref et de chescun autre.

Scrop. Si vous ne le poez vser en le per vsez le en le post.

Den m. Nous vous dioms qe vn Ion de Stodhay demaunda certeynz tenemenz vers Robert de Clesseby et Anable sa femme par vn bref de forme de doune ou Robert et Anable vouchèrent a garrauntie mesme

¹ Reported by C and H. Names of the parties from the Plea Roll. ² Text of (I) from C.

Note from the Record—continued.

that he had in the octaves of St. Martin last past sufficient lands and tenements in Islington by descent etc. from the same Roger. And of this he putteth himself on the country. And Alexander doth the like. So the Sheriff is ordered to make come here three weeks after Michaelmas Day twelve etc. because both etc. On that day the aforesaid Robert cometh by his attorney, and he offered himself on the fourth day against the aforesaid Alexander, son of Roger, of the aforesaid plea of the moiety etc. which he warranted to the same Robert and afterwards surrendered etc. And Alexander doth not come nor doth he abide the averment which he offered beforetime etc. So it is considered that the aforesaid Robert have of the land of the aforesaid Alexander, the son of Roger, to the value etc.

25. CLEASBY v. APPLGARTH.¹

I.

Annabel that was wife of Robert of Cleasby brought her *cui in vita* against Thomas of Applegarth and claimed certain tenements in Marske and in Richmond.

Trevanion. We have naught in these tenements save jointly with Cecily our wife, who is not named in the writ. Judgment of the writ—and he tendered a fine which witnessed that one Isabel granted and surrendered the same tenements to Thomas and to Cecily and to the heirs of their bodies gendered.

Denham. The fine supposeth that you entered by Isabel, and our writ layeth your entry by our husband. [The fine,] therefore, is contrary to the entry we allege, and we will aver our writ.

Trevanion. You have no tenant named in your writ who can surrender your claim, for the wife is as fully tenant as we are, as the fine proveth, and therefore your writ is bad.

Denham. If I were to name the wife as well as her husband, and the husband were to make default after default, the wife would be received to defend her right, and she would say that she had not entered by her husband, and so she would defeat us under this writ and under every other.

Serope. If you cannot use the writ in the *per* you can use it in the *post*.

Denham. We tell you that one John of Studhow claimed certain tenements against Robert of Cleasby and Annabel, his wife, by a writ of formedon under which Robert and Annabel vouched this Thomas

¹ See the Introduction, p. xliii. above

cesti Thomas par le fet soun pere ou mesme cesti Thomas cum heyr garraunty mes il dit qe ren ly fut descendu ou Robert et Anable tenderent dauerer qil auoit assez par descent ou mesme cely Thomas rendy a Ion de Stodhay sa demaunde ou la garde se fit qe nous recouerymes vers ly a la valu et pus le tens qil diunt qe ceste fyn se leua et depus qe nous recouerymes de lestat le pere Thomas eyne de lestat Thomas et Cecile et pus cel recoueryr nostre baroun aliena a mesme cesti Thomas demaundoms iugement si par mye la tenaunce Cecile qe esteynt par le recouerer de plus haut put nostre bref abatre et si vous le volez dedire nous le voloms auerer par recorde etc.

Stonor. Ceo serreit a trier le dreyt Cecille ou ele ne serreit partie a qei vous nauendrez mye Cecile ad sa garrauntie vers ly et sez heysr la quele garrauntie ele perdereit si vous fuissez respoundu sanz ceo qe ele fut nome en le bref et dautre part vous auez relese et quitclame a Cecile ou cele relese ne la put valer si ele ne fut nome tenant ou si a cesti bref fuissez respoundu et ele nent nome vous recouerez par cas fee et dreyt encountre vostre fet demene qe serreit inconuenient.

Berr. Si vous abatissez cesti bref encountre lauerement qil tendent si enscreireit qe auxi bien le purrez abatre par vn fyn leue .xl. aunz de cy qe serreit duresce et pur ceo respoundez.

Treuen. Bien est verite qe il nous voucha et qe nous deynes qe rens nous fut descendu et qe nous reudynes al demandant et qe troue fut par enqueste qe auez [*sic*] assez par descent par qei fut agarde qil recouerissent vers tenementz qe nous fuerent descenduz a la vaillance dez tenementz perduz ou le viconte les liuera seisine dez tenemenz qe fuerent de nostre purchase par qei nous feymes suggestioun deuant sire Rauf de Hengham coment le viconte auoit liure a eux seisine dez tenemenz qe fuerent de nostre purchase hors de soun garrauntie par qei bref issit al viconte qil feit enquerre si ceus tenemenz fuerent nostre purchase ou nostre heritage et si troue fut nostre purchase qe il nous feit reauer seisine de mesme les tenemenz ou troue fut nostre purchase iointement oue nostre femme par qei le viconte nous liuera seisine

[the present defendant] to warranty by the deed of his father, so that this Thomas warranted as heir, but he said that naught had descended to him, and Robert and Annabel thereupon offered to aver that he had assets by descent, and this same Thomas surrendered to John of Studhow the land claimed by him, and judgment was given that we should recover against him to the value, and this was after the time when they say this fine was levied; and since we recovered the estate of Thomas and Cecily from the estate of the elder Thomas, the father, and after that recovery our husband alienated to that same Thomas, we ask judgment whether he can abate our writ by virtue of the tenancy of Cecily, which was extinguished by the recovery of a higher one; and if you want to deny [what we say] we are ready to aver it by the record etc.

Stonor. That would be to try Cecily's right in circumstances in which she could not be a party [to the trial], and you will not be allowed to do that. Cecily hath her warranty against him and his heirs, which warranty she would lose if you were to be answered without her being named in the writ. And, further, you have released and quitclaimed to Cecily, and that release can advantage her naught if she be not named as tenant; and, if you are answered to this writ without her being named as tenant, you will, maybe, recover fee and right contrary to the tenor of your own deed, which would be incongruous.

BEREFORD C.J. If you could abate this writ in face of the averment which they offer, it would follow that you could just as well abate it by a fine levied forty years ago, which would be a hardship; and therefore answer.

Trevanion. It is true, indeed, that he vouched us and that we said that naught had descended to us, and that we surrendered to the claimant and that it was found by inquest that we¹ had assets by descent; wherefore judgment was given that they should recover the value of the tenements lost out of the tenements which we had by descent; and thereupon the Sheriff delivered seisin to them of tenements which we had by purchase. We, therefore, made a statement before Sir Ralph of Hengham showing how the Sheriff, going outside his authority, had delivered to them seisin of tenements which we had by purchase; and thereupon a writ issued to the Sheriff directing him to inquire whether those tenements were ours by purchase or by descent; and, if it were found that they were of our purchase, then he was to see that we had seisin again of the same tenements; and it was found that they were of the joint purchase of us and of our wife, and the Sheriff thereupon delivered us seisin as in right of our joint

¹ But see the text, where *auet* seems to be a slip for *aucoms*.



com de dreyt de nostre ioint purchase et issy sumes ioyntement tenant et la femme nent nome iugement du bref.

Denom. Bien est verite qe cele garrauntie vynt al viconte par quele garrauntie il prist lenquest ou troue fut qe lez tenemenz qe ore sount en demande fuerent soun heritage et qe lez terres qe fuerent primes primes *[sic]* liueriez a nous fuerent soun purchase et nous liuera mesmes ceus tenemenz qe vous ore demandez com soun heritage a tenir en value dez terres vers ly recouerez et issi fumes nous seisi tanqe nostre baroun aliena.

Treuen. Le viconte retourna le bref qe il auoit troue par enqueste qe lez tenemenz qe fuerent liueriez a Robert et Anable fuerent del purchase Thomas par qe il rebailla a Thomas seisine de mesmes ceus tenemenz et auoit *[tendi]* a Thomas et a Anable tenemenz qe fuerent de soun heritage les queus il auoit refuse le quel retorne est entree en roule et accepte de court par qe nous demaundoms iugement si ele put dire qe par vertue de ceo bref le viconte lour liuera seisine de ceuz tenemenz cum de soun heritage encountre le retorne de mesme ceu bref qe le viconte ad fet qe est de recorde le quel retorne testmoigne qil tendy a eux et qe il ne lyuera point pur ceo qil refuserent.

Berr. Vn bref issit au viconte a lyuerer seisine a vn homme dez tenemeuz qil auoit recouery cy eynz ou le viconte nauoit fet reus mes retourna le bref qil auoit liuere seisine ou si le retorne le viconte eust este de recorde il ne eust ia recouery par vertue de ceo iugement par qe mesme le fet put estre yci qil fit vn et retourna vn autre par qe par cel recouerir com par recorde ne poez estre eyde.

Treuen. Qe le viconte nous liuera la seisine de ceus tenemenz troue par enqueste nostre purchase liuere a eux a tenir a la valu dez tenemenz perduz prest etc.

Herlc. Vous ditez trop poy qe vous dirrez qe vous estez entrez par liuere de viconte et nent par nostre baroun qe le trauers qe vous donez nest pas a nostre entre.

Berr. Il est al abatement de vostre bref a prouer qil sunt en lour primer estat ioynt par la fyn.

Herlc. Qe le viconte nous lyuera mesmes lez tenemenz cum del heritage Thomas a la vaillance dez tenemenz perduz et qe nostre estat par cel liuerie continuames tanqe nostre baroun aliena a mesme cesti *[Thomas]* prest *[etc.]*.

purchase. So, therefore, we are jointly tenants and the wife is not named. Judgment of the writ.

Denham. It is quite true that this warrant came to the Sheriff, and in virtue of that warrant he held the inquest, by which it was found that the tenements which are now claimed were of Thomas's heritage, and that the lands which were at first delivered to us were of his purchase; and he delivered to us these same tenements, which you are now claiming, as Thomas's heritage to hold to the value of the lands recovered against him, and so we were seised until our husband alienated.

Trevanion. The Sheriff made return to the writ that he had found by inquest that the tenements which were delivered to Robert and Annabel were of Thomas's purchase, and therefore he had redelivered seisin of those same tenements to Thomas, and had offered to Thomas and Annabel the tenements which were of his heritage, which they refused; which return is entered upon the roll and accepted by the Court. We ask judgment, therefore, whether the claimant can say that it was in virtue of that writ that the Sheriff delivered seisin to them of those tenements as of Thomas's heritage in face of the return which the Sheriff made to that same writ, which is of record, which return witnesseth that the Sheriff offered them to them and did not deliver them because they refused them.

BEREFORD C.J. A writ issued to the Sheriff to deliver seisin to a man of tenements which he had recovered here in Court, under which the Sheriff did naught, but made return to the writ that he had delivered seisin. Now if the Sheriff's return had been of record the claimant would have got naught in virtue of his judgment. There is a possibility, therefore, that the Sheriff did the same thing in this case, [namely] that he did one thing and returned that he had done another; and therefore you cannot be aided by this recovery as by a matter of record.

Trevanion. Ready etc. that the Sheriff delivered us seisin of those tenements which were found by inquest to be of our purchase, [which he had previously] delivered to them to hold to the value of the tenements lost.

Herle. You do not say enough. You should say that you entered by the Sheriff's livery and not by our husband, for the traverse you make doth not go to the entry laid by us.

BEREFORD C.J. To prove that they have their original joint estate in virtue of the fine goeth to the abatement of your writ.

Herle. Ready etc. that the Sheriff delivered to us these same tenements, as of Thomas's heritage, to the value of the tenements lost, and that we continued our estate in virtue of this livery until our husband alienated to this same Thomas.

Treuen. Et qe le vieonte par vertue de lour garaunt qe issit a nostre suggestioun nous lyuera la seisine de ceux tenemenz cum de nostre purchase troue par enqueste deuant ly et lyuera a eux a la vaillanee dez tenemenz perduz et issy sumes nous en nostre primer estat par la fyn prest etc.

Ideo inquiratur.

II.¹

Cui in vita.

Anable qe fut la feme Robert de Clesby porta son bref de cui in uita uers Thomas le fiz Robert de Aplegarth et demaunda vn mies [et] ij. earues de terre en Richemonde et en mersk en les queux Thomas nauoit entre si noun par robert son baron a qy ele en sa vie countredire ne poait.

Traw. defendit et dit qe les tenementz qe sont en demaunde sont parcele du maner de Westapelgarth dount thomas nad rienz en ceux tenementz si noun iointement od sa feme cecyle nent nomez en le bref iugement du bref et mist anaunt fine qe ceo tesmoygna.

Denom. Nous voloms auerer qe Thomas entra par nostre baron si il fut resceu de abater nostre bref par taunt qe cele nest pas nome il defrait nostre entre.

Stonor. Si vous eez malement conceu vostre bref en le per vous le auerez en le post et ceo nest vn meschef.

Denom. Nous dioms qe graunt tens apres cest fine leue a Thomas et Cecyle nostre baron vint et aliena a Thomas et vous dioms coment Aleyn de Stodhage porta son bref vers Robert de Cleseby et Anable sa feme des tenementz qe ils tyndrent com du dreyt Anable ou Robert et Anable vouchèrent a garauntie Thomas le fiz Robert de apelgart par la chartre son pier qy vint et entra en garauntie eom eely qy rienz auoit dount fer a la value par descent et rendit al demaundaunz lur demaunde et les autres tenderunt de auerer qe il auoit assez dunk en le mene tens eynz qe la enqueste fut pris vint eely Thomas et se demist de ceux tenementz et reprist estate pur luy et pur sa feme la enqueste vint et dit qe le iour de vouchier il auoit assez par descent par qay fut agarde qe ils recouereissent meysmes les tenementz dount fine fut leue en le mene tens entre le vouchier et le recouerer et nous dioms qe apres celle recouerer qe nous et nostre baron issi auoens com du dreyt

¹ Text of (II) from *H.*

Trevanion. And we are ready etc. that the Sheriff in virtue of the warrant which issued upon our statement delivered to us seisin of those tenements as of our purchase, so found by inquest before him, and that he delivered to them [tenements of our heritage] to the value of the tenements lost, and that so we are in our first estate in virtue of the fine.

So the facts are to be inquired of.

II.

Cui in vita.

Annabel that was wife of Robert of Cleasby brought her writ of *cui in vita* against Thomas, the son of Robert of Applegarth, and claimed a messuage and two carucates of land in Richmond and in Marske, into which Thomas had not entry save by Robert, her husband, whom in his lifetime she could not oppose.

Travers defended and said that the tenements claimed are parcel of the manor of West Applegarth, in which tenements Thomas had naught save jointly with his wife Cecily, who is not named in the writ. Judgment of the writ—and he tendered a fine in witness thereof.

Denham. We will aver that Thomas entered by our husband. If he were received to abate our writ on the ground that Cecily is not named, that would be to defeat the entry we have laid.

Stonor. If you have wrongly expressed your writ in the *per*, you can have one in the *post*; and that is no hardship.

Denham. We tell you that a long time after this fine was made to Thomas and Cecily our husband came and alienated to Thomas, and we tell you that Alan of Studhow brought his writ against Robert of Cleasby and Annabel, his wife, of the tenements which they held as of the right of Annabel, under which Robert and Annabel vouched to warranty Thomas, the son of Robert of Applegarth, by the charter of his father, which Thomas came and entered into the warranty as one who had naught by descent out of which to pay to the value, and he surrendered to the claimants what they claimed; and the others offered to aver that he had assets [by descent]. Then, while in the meantime an inquest was taken, this Thomas came and divested himself of these tenements and resumed estate in them jointly with his wife. The inquest came and said that on the day of the voucher he had assets by descent, and judgment was therefore given that the claimants should recover the same tenements in respect of which a fine was levied in the mean time between the voucher and the recovery. And we say that after this recovery which we and our

anable le baron aliena apres a thomas soul com nous supposums par nostre bref par qay si nostre bref fut ore abatu il nous oghterait de nostre entre.

Herel. Si il abatiseit nostre bref ore ceo serroit par force de la fine mes la force de la fine et touz les mene tens entre le voucher et le recouerer sount defetez par le recouerer de plus haut.

Stonor. Nous auoms moustre par chose de recorde qe la feme est tenaunt od son baron et depuys qe ils ne ount rienz de fait de especialte qe puyz prouer lur dit forsge vent iugement si ils pount ceo bref mayntenyr car si ils issi poaient ilz oghterait tenaunt de sa tenaunce ou il nest pas partie.

Trawa. Si le baron fait default apres defaute et la feme vynt en court et priat qe nul defaute qe son baron fit ne la fut prejudiciel et ele meist auant la fine qe tesmoygnat qe ele fut ioint tenaunt ouesqe luy ieo crai qe vous ne irriez pas a iugement.

Berr. Ieo crai qe si issi fut et ils pussaint taunt dire com ils dient ore qe sa prier uaudreit powe.

Stonor. Nous serroms la a uos auisementz si nous respoundroms a tiel bref ou nous prouons nostre estate par chose de recorde et ils ne ount rienz forsge vent.

Herel. Nous auerions nostre dit par processe ou par qaunt qe la court agardera.

Berr. Ils vous dient qe ceo fut leue en le mene tens quel chose par le recouerer fat defete et ceux seisiz aunz et iours apres le recouerer tanke le baron aliena si serriez vous resceu a uoucher [*sic*] et par taunt abateroit son bref et si le poez vous dire ou vous esterez purchacour par fine et puyz demaisez et un qaraunte aunz apres repurchasatez ceus tenementz vous clamer a tenyr par la fine de vostre primer purchace responez.¹

Stonor. Nous enparleroms et reuindrent et disoient vous auez entendu coment le recouerer sei fit des tenementz qe furent descenduz ceux tenementz nous uindrent de purchace sar qay le recouerer ne sei poait nient fere issi qe nostre purchace est de force et demaundoms iugement ou le recouerer ne sei prist point sur le purchace si il poet nostre purchace et la force de la fine esteyndre qar nous vous dirroms

¹ The text is obviously corrupt.

husband so got as of the right of Annabel¹ our husband alone alienated to Thomas, as we allege in our writ; and, therefore, if our writ were now abated, he would quash the entry we have laid.

Herle. If he were to abate our writ now it would be by virtue of the fine, but the force of the fine and of all that was done in the interval between the voucher and the recovery is overridden by the recovery which is of higher nature.

Stonor. We have shown by matter of record that the wife is tenant jointly with her husband; and since the claimant hath no deed by way of specialty that can prove what she saith, but bringeth forth wind only, [we ask] judgment whether they can maintain this writ, for if, in this way, they can, they will be ousting a tenant from her tenancy by proceedings to which she is not privy.

Trevanion. If the husband made default after default and the wife came into Court and prayed that no default by her husband should be to her prejudice, and proffered the fine which witnesseth that she is tenant jointly with him, I believe that you would not go to judgment.

BEREFORD C.J. If it were so and the defendants could say as much as they say now, I believe that her prayer would avail her little.

Stonor. We shall take your ruling whether we ought to make answer to such a writ where we base our title upon matter of record and they bring forth naught but wind.

Herle. We will aver what we say by process or how else the Court may rule.

BEREFORD C.J. They tell you that this fine was levied during the interval [between the voucher and the recovery], which fine was defeated by the recovery, and that [Robert and Annabel] were seised for years and days after the recovery until the husband alienated. If you were received to your averment, the claimant, by so receiving you, would abate her own writ. Say, if you can, that you were a purchaser by a fine and that you afterwards demised, and that forty years after that you repurchased these tenements you claim to hold under the fine by your first purchase.

Stonor. We will imparl—and they came back and said: You have heard how the recovery was made of tenements which were held by descent; but the tenements [which were, in fact, delivered by the Sheriff] came to us by purchase, which could not be subject to the recovery, and our purchase still remaineth effective; and we ask judgment whether, seeing that the recovery could not have effect upon what was of our purchase, they can annul our purchase and the effect

¹ Who was the wife of 'our husband.'

coment le recouerer sei fet Aleyn de stodaghe porta son bref de fourme de doun en le reuerti vers robert et Anable et ils vouchèrent a garauntie thomas ou thomas vint [et] entra en garauntie et rendit com cely qy rien auoit par descent de cely par qy fet il fut vouche mes a drayn fut troue qe il eut assez par descent et fut maunde al vescount qe il liuerait a robert et Anable la ualue le vescount vint et liuera les terres qe Thomas et Cecyle auoint purchacez par qay Thomas vint ci en court et moustra cesey et sei pleynt du vescount et troue fut qe il auoit liere seisine de son purchace par qay fut agarde qe Thomas receust cest terre qe il auoit de purchace et qe il lay liuerait la terre qe il auoit par descent par resone de quel agarde ceo purchace qe ils recouerunt par la pleynt lour fut agarde et reuint a la primer tenaunce et par la fine com cele qe ne fut nient defete par nul recouerer et demaundoms iugement del hure qe tiel recouerer ne poait defaire ceo purchace par la fine par qay la fine fut touz iours de force issi qe le baron et sa feme uncore tenent iointement par la fine qe nest mie defete et demaundoms iugement si ceo bref purront vser vers nous si la feme ne sait nome.

Denom. La ou vous ditez qe le viconte liuera la purchace la primer liere fut des tenementz en Cartone et en bratanby et ceux tenementz vous esteient rebayllez et adunk la seisine nous fut liere de meymes les tenementz en Richemunde et en mersk sur queux nous auoms ore porte le bref com ceux qe vous auez par descent issi fumes nous seisis tanke nostre baron vous aliena et prest del auerer.

Et in crastino vint *Herel* et pleda coluertment [*sic*] et dit qe ceux tenementz qe furent en demaunde ne deuindrent unkes puy la liere hors de lur mayne tanke le baron aliena.

Stonor. Parlez vous de la primer liere ou de la secunde.

Herel. Ieo ne vous parle de primer ne de secunde mes unkes puis qe les tenementz furent liurez com a la ualue ne deuindrent unkes hors de nostre mayn etc.

Stonor. Nous vous dioms qe ceus tenementz furent rebaillez com ceux qe furent malement primes liurez par le viscount.

Et sic sunt ad patriam.

of the fine, for we will tell you the facts of the recovery. Alan of Studhow brought his writ of formedon in the reverter against Robert and Annabel, and they vouched Thomas to warranty. Thomas came and warranted and surrendered as one who had naught by descent from him by virtue of whose deed he was vouched, but in the end it was found that he had assets by descent, and the Sheriff was ordered to deliver [land from these assets] to the value to Robert and Annabel. The Sheriff came and delivered land which Thomas and Cecily had by purchase; whereupon Thomas came into Court here and showed this, and made complaint in respect of the Sheriff, and it was found that the Sheriff had delivered seisin of that which Thomas had by purchase. It was therefore adjudged that Thomas should receive back that land which he had by purchase, and that the Sheriff should deliver [to Robert and Annabel] land which Thomas had by descent; and, in virtue of that judgment, that land acquired by purchase, which he recovered upon his complaint, was adjudged to him, and he held it as he held it before, under the fine, to the effect that that fine was never annulled by any recovery; and we ask judgment whether, since that recovery was never able to annul that purchase by the fine, and the fine was consequently always effective, so that the husband and wife still hold jointly by virtue of the fine, which is not annulled, we ask judgment whether they can use this writ against us unless the wife be named.

Denham. Whereas you say that the Sheriff delivered the land held by purchase, the first livery was of tenements in Garton and Brittenby, and those tenements were delivered back to you; and then seisin was delivered to us of these tenements in Richmond and in Marske, in respect of which we have now brought our writ, as those which you had by descent. We were so seised until our husband alienated to you, and we are ready to aver it.

And *Herle* came on the morrow and pleaded precisely and said that those tenements which were claimed never passed out of their possession after livery until the husband alienated.

Stonor. Are you speaking of the first livery or the second?

Herle. I am speaking neither of a first livery nor of a second; but never after the tenements were delivered as for the value did they pass out of our possession etc.

Stonor. We tell you that those tenements were delivered back as having been at first improperly delivered by the Sheriff.

And so they are to go to the country.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 274, Yorkshire.

Amabilla que fuit vxor Roberti de Cleseby per attornatum suum petit uersus Thomam filium Roberti de Appelgarthe sex messuagia vnum molidinum quater viginti acras terre decem acras prati et quadraginta acras bosci cum pertinenciis in Mersk et Rychemund vt Ius suum de dono Roberti de Appelgarthe qui ipsam Amabillam et predictum Robertum de Cleseby quondam virum suum inde feofauit et in que Idem Thomas non habet ingressum nisi per predictum Robertum quondam virum ipsius Amabille qui illa ei dimisit cui ipsa in vita sua contradicere non potuit etc.

Et Thomas per attornatum suum venit Et dicit quod quo ad quinque messuagia de predictis tenementis dicit quod messuagia illa sunt in Estappelgarthe in Rychemunde et residuum in Westappelgarthe in Mersk Et dicit quod non debet ei ad hoc breue respondere Dicit enim quod ipse tenet predicta tenementa coniunctim cum quadam Isabella vxore sua per finem factum in Curia Edwardi Regis patris domini Regis nunc a die sancti Michaelis in vnum mensem anno regni sui tricesimo secundo coram R. de Hengham et sociis suis Iusticiariis ipsius Regis itinerantibus etc. apud Eboracum Inter ipsos Thomam et Isabellam vxorem eius querentes et Ceciliam que fuit vxor Roberti de Appelgarthe deforcientem de maneriis de Estappelgarthe et Westappelgarthe cum pertinenciis que sunt in Rychemunde et Mersk vt predictum est vnde placitum conueuicionis summonitum fuit inter eos etc. scilicet quod predictus Thomas recognouit predicta maneria cum pertinenciis esse Ius ipsius Cecilie Et pro hac recognicione etc. Eadem Cecilia concessit predictis Thome et Isabelle predicta maneria cum pertinenciis Et illa eis reddidit in eadem Curia habenda et tenenda eisdem Thome et Isabelle et heredibus quos idem Thomas de corpore ipsius Isabelle procreauerit de predicta Cecilia et heredibus suis imperpetuum Et profert partem predicti finis que hoc testatur etc. Et ex quo predicta Isabella non nominatur in breui petit Iudicium de breui etc.

Et Amabilla dicit quod predictus Thomas breue suum cassare non potest per allegacionem alicuius finis quem dicit fuisse lenatum anno predicti Regis patris etc. tricesimo secundo Quia dicit quod eadem Amabilla et predictus Robertus de Cleseby vir suus diu post tempus illud fuerunt in seiscina de eisdem tenementis donec Idem Robertus vir etc. illa dimisit vt predictum est Et hoc pretendit verificare Et petit Iudicium etc.

Et Thomas dicit reuera quod quidam Alanus de Stodhaghe coram predicto Radulpho de Hengham et sociis suis Iusticiariis eiusdem Regis patris etc. anno regni sui vicesimo octauo apud Eboracum per breue de forma donacionis petiit uersus predictos Robertum de Cleseby et Amabillam vxorem eius nominando ipsam Anabillam¹ etc. vnum messuagium tres

¹ This name is spelled in the Record variously Amabilla and Anabilla.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207). r. 274, Yorkshire.

Annabel that was wife of Robert of Cleasby by her attorney elaimeth against Thomas, son of Robert of Applegarth, six messuages, one mill, four score acres of land, ten acres of meadow and forty acres of woodland, with the appurtenances, in Marske and Richmond as her right by the gift of Robert of Applegarth, who enfeofed thereof this same Annabel and the aforesaid Robert of Cleasby, aforetime her husband; and into which the same Thomas hath not entry save by the aforesaid Robert, aforetime husband of this same Annabel, who demised them to him, which Robert Annabel could not oppose in his lifetime etc.

And Thomas cometh by his attorney and saith in respect of five messuages of the aforesaid tenements that those messuages are in East Applegarth in Richmond, and that the residue are in West Applegarth in Marske; and he saith that he ought not to answer Annabel under this writ, for he saith that he doth hold the aforesaid tenements jointly with one Isabel his wife in virtue of a fine made in the Court of King Edward, father of the lord King that now is, a month after Michaelmas Day in the thirty-second year of his reign, before Ralph of Hengham and his companions, Justices in Eyre of the said King, at York, between the said Thomas and Isabel, his wife, complainants, and Cecily that was wife of Robert of Applegarth, deforcient, of the manors of East Applegarth and West Applegarth, with the appurtenances, which are in Richmond and Marske, as is aforesaid, in respect of which a plea of covenant was summoned between them etc., to the effect that the aforesaid Thomas recognized the aforesaid manors, with the appurtenances, to be the right of the said Cecily; and, in consideration of this recognition etc., the same Cecily granted to the aforesaid Thomas and Isabel the aforesaid manors, with the appurtenances, and surrendered them to them in the same Court to have and to hold to the same Thomas and Isabel and the heirs which the same Thomas should beget of the body of the same Isabel, of the aforesaid Cecily and her heirs for ever. And he proffereth part of the aforesaid fine which witnesseth this etc. And because the aforesaid Isabel is not named in the writ he asketh judgment of the writ etc.

And Annabel saith that the aforesaid Thomas cannot quash her writ by alleging any fine which he saith was levied in the thirty-second year of the aforesaid King, father etc., because she saith that she, Annabel, and the aforesaid Robert of Cleasby, her husband, were long after that time in seisin of the same tenements until the same Robert, husband etc. demised them as is aforesaid; and this she offereth to aver, and she asketh judgment etc.

And Thomas saith that the truth is that a certain Alan of Studhow, before the aforesaid Ralph of Hengham and his companions, Justices of the same King, father etc., in the twenty-eighth year of his reign, at York, did, by a writ of formedon, claim against the aforesaid Robert of Cleasby and Annabel, his wife, naming the same Annabel etc., one messuage, three

Note from the Record—continued.

acras terre et dimidiam quatuordecim acras prati decem et nouem acras bosci cum pertinenciis in Hodeswell iuxta Rychemunde vbi Idem Thomas quem predicti Robertus et Anabilla in eadem Curia vocauerunt inde ad warrantiam per factum predicti Roberti patris sui tunc venit et tanquam nichil habens per descensum de predicto Roberto patre etc. eis warrantizauit etc. et reddidit predicto Alano predicta tenementa etc. per quod consideratum fuit quod predictus Alanus recuperaret inde seisinam suam uersus predictos Robertum et Anabillam et iudem Robertus et Anabilla haberent de terra predicta de terra predicti Thome que ei descendisset iure hereditario de predicto patre suo ad valenciam etc. pretextu cuius Iudicii vicecomes per breue [de] Iudicio liberauit predicto Alano seisinam suam de predictis tenementis et similiter eisdem Roberto et Anabille de tenementis nunc petitis vt de terra ipsius Thome de perquisito et que non descenderunt etc. seisinam suam habere fecit pro valencia etc. quamquam ei preceptum fuisset per predictum breue de Iudicio quod de tenementis que ei descenderunt et non aliis habere fecisse ad valenciam etc. Et dicit quod quia predictus vicecomes Itaque [sic] eis liberauit tenementa predicta nunc petita que sunt de perquisito [etc.] vt predictum est Idem vicecomes per aliud breue de Iudicio ad querimoniam ipsius Thome sibi directum rehabere fecit eidem Thome tenementa illa nunc petita vt tenementa de perquisito etc. et de aliis tenementis que ei descenderunt predictis Roberto et Anabille per idem breue alibi habere fecit pro valencia tenementorum recuperatorum etc. Et Ita dicit se esse seisitum de predictis tenementis petitis vt de hiis que reuenerunt in seisina ipsius Thome ex liberatione ipsius vicecomitis in forma predicta et illa nunc tenet eodem modo quo ea tenuit ante liberationem predictam scilicet coniunctim cum predicta Isabella vxore sua per predictum finem Et petit Iudicium de breui vt prius etc.

Et Amabilla bene concedit quod tenementa que ipsa modo petit sibi liberata fuerunt per breue de Iudicio pro valencia predictorum tenementorum que predictus Alanus uersus eos recuperauit set bene defendit quod tenementa ista post liberationem eis inde factam nunquam deuenerunt extra seisinam ipsorum Roberti et Amabille sicut predictus Thomas dicit Immo ipsi seisinam suam inde continuauerunt quousque predictus Robertus de Cleseby quondam vir suos tenementa illa dimisit predicto Thome sicut predictum est Et quod Ita sit petit quod veritas inquiretur per patriam Et Thomas similiter Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in tres septimanas xij. etc. per quos etc. Et qui nec etc. Quia tam etc.

Note from the Record—continued.

acres and a half of land, fourteen acres of meadow and nineteen acres of woodland, with the appurtenances, in Huds-well near Richmond, where the same Thomas, whom the aforesaid Robert and Annabel vouched in the same Court to warranty thereof by the deed of the aforesaid Robert, his father, then came, and warranted them etc. as one who had naught by descent from the aforesaid Robert, father etc., and he surrendered to the aforesaid Alan the aforesaid tenements etc.; wherefore it was considered that the aforesaid Alan should recover his seisin thereof against the aforesaid Robert and Annabel and that the same Robert and Annabel should have of the aforesaid land of the land of the aforesaid Thomas which had descended to him by hereditary right from his aforesaid father to the value etc.; in virtue of which judgment the Sheriff, in obedience to a judicial writ, delivered to the aforesaid Alan his seisin of the aforesaid tenements, and also caused the same Robert and Annabel to have their seisin of the tenements now claimed, as of the land of the said Thomas which he had by purchase and which had not descended etc., to the value etc., notwithstanding that he had been ordered by the aforesaid judicial writ to put them in seisin of tenements which had descended to him and of none other to the value etc. And he saith that because the aforesaid Sheriff so delivered to them the aforesaid tenements, now claimed, which are of the purchase etc. as is aforesaid, the same Sheriff in obedience to another judicial writ directed to him upon the complaint of the said Thomas caused the same Thomas to have again those tenements which are now claimed, as being tenements of the purchase etc., and in obedience to the same writ caused the aforesaid Robert and Annabel to have other tenements elsewhere which had descended to him to the value of the tenements recovered etc. And so he saith that he is seised of the aforesaid tenements now claimed as of those which returned into the seisin of him, Thomas, by the livery of the said Sheriff in the form aforesaid, and he now holdeth them in the same manner in which he held them before the aforesaid livery, to wit, jointly with the aforesaid Isabel, his wife, in virtue of the aforesaid fine. And he asketh judgment of the writ as before etc.

And Annabel doth fully admit that the tenements which she is now claiming were delivered to her in virtue of the judicial writ for the value of the aforesaid tenements which the aforesaid Alan recovered against them,¹ but she doth wholly deny that those tenements ever passed out of the seisin of the same Robert and Annabel, as the aforesaid Thomas saith, after livery of them had been made to them; she saith, on the contrary, that they continued their seisin thereof until the aforesaid Robert of Cleasby, aforetime her husband, demised them to the aforesaid Thomas, as is aforesaid; and, in proof of this, she asketh that the truth may be enquired of by the country. And Thomas doth the like. So the Sheriff is ordered to make come here three weeks after Easter twelve etc. by whom etc., and who are neither etc., because both etc.

¹ i.e. against Annabel and Robert, her husband.

26. CORBET v. THE PRIOR OF KIRKHAM.¹I.²

Vn .A. porta bref de Cosynage vers le Prior de Kirkham de .vj. marches de Rente oue les appurtenances en N.

Scrop. Nous vous dyons qe vn .A. soun auncestre dona par fyn a deu et a vn .P. nostre predecessour et a les chanoins etc. certeynz tenemenz a tener de ly et sez heirz a touz iours a prendre a ly etc. vj. marz par an et issi est ceo rente seruice ou naturel reconer est done par voy de destresce ou par bref de coustumes et de seruices et demaundoms iugement si tel bref vers nous gyse.

Denom. Cesti bref est done a reconer fee et demene et vous ne pooz dedire qe ceste rente nest ne de fee ne de demene et vous ne dites pas qe vous lauez payez a autre et demaundoms iugement si le bref ne git bien.

Scrop. Si vous recouerez par cesti bref vous auerez bref a mettre vous en seisine ou il ne vous put mettre en seisine si par destresce noun ou destresce vous est done par voye de ley par qei il serroit veyn a chacer le viconte a fere en vostre profit ceo qe vous pooz mesme fere par ley.

Berr. Il put vser le mordancestor de rente seruice par qei cesti bref qe est de mesme la nature.

Scrop. Sil fut a demander ceste rente vers autre qe vers soun verrey tenant le bref gerreit bien mez depus qil la demande vers nous par vertue de la fyn qe sumes soun tenant nentendoms mye qe le bref ygyse.

Greuen [*sic*]. Mes qe plusours remedies me soient donez et ieo me prenk a vn par tant ne ensute mye qe cesti bref est mauuays.

Et dautre part vous supposez qe nous pusses [*sic*] rendre vostre demande mes nous sumes tenant de la terre par qei de la rente issant de mesme la terre ne poms tenant estre ne vostre demande rendre.

Denom. Vous estez tenant de la terre et de fortiori igitur de la rente par qi [*sic*] nostre bref git bien.

Burton. En vn repligiare mez qe vn homme conissoit la seisine dez seruices il se ostereit bien dez arerages a dire qe riens arere mes en ceo bref sil conussoit la seisine il ne se ostereit mye de damages par dire rens arere et de pus qe en vn repligiare il se purreit descharger

¹ Reported by C, D, E, and H. Names of the parties from the Plea Roll This is Fitzherbert, *Cosynage*, f. 244, case 11. ² Text of (1) from C'

26. CORBET v. THE PRIOR OF KIRKHAM.¹

I.

[One A. brought a writ of cosinage against the Prior of Kirkham in respect of a rental of six marks, with the appurtenances, in N.

Scrope. We tell you that one A., his ancestor, gave by a fine to God and to one P., our predecessor, and to the canons etc. certain tenements to hold of him and his heirs for ever, receiving therefor six marks a year; and so this is a rent service, the natural recovery of which is provided by means of distress or by a writ of customs and services; and we ask judgment whether this writ lieth against us.

Denham. This writ is given to recover fee and demesne, and you cannot deny that this rental is of fee and of demesne; and you do not say that you have paid it to any other; and we ask judgment whether the writ doth not properly lie.

Scrope. If you recover by this writ you will get a writ to put you in seisin. Now the Sheriff cannot put you in seisin except by distress, but the law giveth you a means of having distress, and therefore it would be idle to force the Sheriff to do for your advantage that which you have a legal means of doing for yourself.

BEREFORD C.J. He can use the mortdancestor to recover a rent service, and, consequently, this writ, which is of the same nature.

Scrope. If he were claiming this rental against any other than his actual tenant the writ would lie well enough; but since he is claiming it against us, who are his tenants, by virtue of the fine, we do not think that the writ lieth.

Treravoun. Because divers remedies are given me and I abide by one of them, it doth not follow that this writ is bad.

*The other side.*² You suppose that we can render your claim, but we are tenant of the land, and consequently cannot be tenant of the rent issuing from the same land nor can we render what you elaim.

Denham. You are tenant of the land, and a *fortiori*, therefore, of the rent; and consequently our writ lieth well enough.

Burton. Even though the plaintiff in a replevin admitted seisin of the services he would have a good defence to a claim for arrears by saying that naught was in arrear, but if in this writ the defendant admit the seisin, he will not have a defence to a claim for damages by saying that naught is in arrear; and, since in a replevin he could

¹ See the Introduction, p. xliv above.

² This, of course, is not the usual meaning of *dautre part*, but clearly it cannot have its accustomed meaning

here. Possibly there is an omission of the earlier part of the speech and of the name of the Serjeant speaking.

par respouns ou en cesti il ne purra descharger iugement si a cesti bref qe encountre ley ly put charger deit respoundre.

Denom. Respouns de ren arere en vn replegiare si serreit en cesti bref excepcioun de drein seisi le quel respouns si vous le volez doner nous le accepteroms.

Berr. Coment clamez ceste rente com rente seruice ou com rente charge.

Denom. Nous clamoms solom la fyn qe il mettent auant qe hors de la fyn ne poms rens clamer.

Scrop. Si vous recouerez ceste rente autrement ne ly purra homme mettre en seisine si noun par destresce pur lez seruices et le viconte destreindra auxi auant lez terres qe ne sunt pas tenuz de ly com lez terres qe il tent de ly ou nule est destreignable pur lez seruices areres si noun terres tenuz de ly et demandoms iugement si a ceu bref dount lexecucioun serreit encountre ley deit il estre respoundu.

Denom. Si nous recouerissons vne rente seruice vers vous par assise de nouele disseisine nous destreygndrions par toutes voz terres par qe lexecucioun de cesti bref nest pas encountre ley.

Scrop. Si vous recouerez damages en cesti bref en lu de arerages en vostre eleccioun est auer fieri facias ou la moyte de sez terres ou inconuenient serreit qe pur lez arerages encoruz dez tenemenz qe sunt tenuz de ly qe il aueroit seisine dez tenemenz qe sunt tenuz de autre et ne sunt pas tenuz de ly ne de soun fee ou ley ne veot mye et pur arrerages encoruz de soun fee qil eit seisine ou auantage en autre fee. *Et de autre part* ou le tenant veot weyuer sa tenance le seignur ne put recouerer sez seruices vers ly par qe en auowerie et en bref de costumes et de seruices le desclamer est done al tenant en tel cas ou si vous a cesti bref fuissez resceu le desclamer ne serreit pas et issy recoueroit [sic] vous les seruices mez qe le tenant voleit weyuer le demene qe serreit inconuenient.

Et est tamen vt credo pur ceo qil pout destreindre pur les arrerages.

II.¹

Thomas fitz Thomas Corbet porte etc. vers le priour de Kyrkeham et demaunde vj. marcs de rente etc. de la seisine vne Augnes sa cosyn etc.

¹ Text of (II) from D.

discharge himself by his answer while here he cannot discharge himself, judgment whether the defendant ought to answer this writ which may charge him contrary to the law.

Denham. The answer of naught in arrear in a replevin would take the form of the exception of latest seised in this writ. And if you like to give us that answer we will accept it.

BEREFORD C.J. How are you claiming this rent, as rent service or as rent charge?

Denham. We are claiming it in accordance with the fine which they proffer, for we can claim naught apart from the fine.

Scrope. If you recover this rent you cannot be put in seisin of it in any other way than by distress for the services; and the Sheriff will distrain indifferently the lands which are not held of the plaintiff and those which the defendant holdeth of him, though distraint for services in arrear lieth only on lands holden of him; and we ask judgment whether the plaintiff ought to be answered to this writ seeing that execution under it would be contrary to the law.

Denham. If we recovered a rent service against you by an assize of novel disseisin we should distrain over all your lands. Execution of this writ is, consequently, not against the law.

Scrope. If you were to recover damages under this writ in lieu of arrears it would be at your election to have a *feri facias* or a moiety of the defendant's lands, and it would be incongruous that for arrears incurred in respect of tenements holden of him the plaintiff should get seisin of tenements which are holden of someone else and are not holden of him or of his fee, and it is contrary to the provisions of the law; and that for arrears in respect of his own fee he should get seisin or advantage in another fee. And, further, where the tenant is willing to waive his tenancy, the lord cannot recover his services against him. In avowry and in a writ of customs and services the right to disclaim is consequently given to the tenant in such case; but if you were received to this writ there would be no right to disclaim, and so you would recover the services although the tenant wished to waive the demesne, which would be incongruous.

¹Yet it is so, as I believe, because he could distrain for the arrears.²

II.

Thomas, son of Thomas Corbet, bringeth etc. against the Prior of Kirkham, and claimeth six marks of rent etc. of the seisin of one Agnes, his cousin, etc.

¹⁻² This is a personal note by the reporter or scribe.

Burtone. Nous vous dioms qe auant ces heures deuant etc. et ces compaignouns Iustices etc. en la counte de E. lan de regne H. [etc.] entre W. de S. et Isabel sa femme etc. vostre auncestre deforeients et vn G. iadys priour de Kyrkeham nostre predecessor etc. par bref de couenaunt etc. ou mesme ceux W. et Isabel conuserent les tenementz dont la rente est issaunt estre le dreit le priour et le dreit de sa eglise etc. auer et tenir au vaunt dit priour et [ces] successors en fee ferme de W. et Isabel et des heirs Isabel rendaunt etc. vj. mares etc. et fesaunt etc. issint est ceo rente seruice ou vous estes seignour et nous tenauntz etc. et porez auer bon bref de custumes et de seruices ou auer destresceement iugement si cesti bref vers luy gise etc.

Denom. Ore demaundoms iugement depus qe vous ne dedites pas qe nostre cosyn ne morust seisi et nous sumes plus prochein heir etc. iugement.

Scrop. Si vous [ussez] distreini vous vseey recouery arrerages etc. sauntz damages mes si vous fuissez reseu a cesti bref vous recouerez damages etc. et ceo ne put estre en rente seruice etc.

Ston. Nest pas merueyle mesqe il reconere damages qe si homme distreindroit pur seruices etc. et la destresce soit repleuye autre tenz il puit vsr lassise et recouery damages auxi de rente seruice com des [autres seruices].

Berr. Sil vst [sic] porte le mordancestor neutendoms pas qil deuoit a celestre reseu etc. et tut soit le mordancestor trie par assise et de cele nature est ceo cosynage etc.

Scrop. Ieo non tenk pas qe le mordancestor gise entre seignour et tenant de rente seruice mes si nous paiassoms a autre la rente vers ly girreit cheseun manere de bref.

Clau. Vous demaundez vers luy fee et demene en supposant qil est tenaunt de la rente et vous mesmes estes tenaunt de la rente et il tenaunt de la terre et il serreit inconuenient de ley de rendre fee et demene et il ne lad pas par qe nous demaundoms iugement.

Denom. Autre deforsour nauoms de la rente qe vous etc.

Scrop. La plus naturel respouns entre seignour et tenaunt ou seignour demaunde seruices est desclamer si le tenaunt voille etc. mes si nous vousisoms desclamer nous ne serroms pas reseu etc. dont il semble qe ceo bref ne gyt pas entre seignour et tenaunt.

Burton. We tell you that ere now before etc. and his companions, Justices etc. in the county of York, in the year of the reign of Harry etc. [a fine was levied] between W. of S. and Isabel, his wife etc., your ancestor, deforcients, and one G., aforetime Prior of Kirkham, our predecessor, under a writ of covenant etc., whereby those same W. and Isabel recognised the tenements from which the rent issueth to be the right of the Prior and the right of his church etc., to have and to hold to the aforesaid Prior and his successors in fee farm of W. and Isabel and the heirs of Isabel, rendering etc. six marks etc. and doing etc. This rent is, consequently, rent service, and you are the lord and we are the tenants etc.; and you can have a good writ of customs and services or you can have distress etc. Judgment whether this writ lieth against the defendant.

Denham. We now ask judgment, since you do not deny that our cousin died seised and that we are the next heir etc. Judgment.

Scrope. If you had distrained you would have recovered arrears etc. without damages; but if you be received to this writ you will recover damages etc., and that is not permissible in rent service etc.

Stonor. It would be nothing very wonderful if he did recover damages, for if a man distrain for services etc. and the distress be replevied, he can at some other time use the assize and recover damages. It is the same with rent service as with other services.

BEREFORD C.J. If he could have brought the mortdancestor we do not think that he ought to be received to this writ etc., for the mortdancestor is triable by assize and this writ of cosinage is of a similar character.¹

Scrope. I do not think that the mortdancestor lieth between lord and tenant in respect of rent service; but if the rent were payable by us to some other, then either kind of writ would lie against the defendant.

Claver. You are claiming fee and demesne against him, supposing him to be tenant of the rent; but you yourselves are tenant of the rent and he is tenant of the land; and it would be an impossibility in law for him to render fee and demesne which he hath not got. Therefore we ask judgment.

Denham. We have no other deforcier of the rent save you etc.

Scrope. The most natural answer between lord and tenant when the lord is claiming services, if the tenant desire to make it etc., is a disclaimer; but we should not be received to disclaim if we desired to do so. It would seem, then, that this writ doth not lie between lord and tenant.

¹ i.e. the circumstances in this case resemble the circumstances triable under a writ of mortdancestor.

Berr. Si vous recouerez ore vous nauerez autre assise mesqe vous poiez destreindre pur la rente et par cel recouerir vous nauendrez iames a destreindre pur les arrarages [*sic*] qe vous ne recouerez forqe le principal etc.

Denom. Ceo verite mes nous recouerions damages en leu dar-rerages etc. com en cas de nouele disseisine.

Et pus le bref fut agarde bon.

Burtone. Ele ne morust pas seisi prest etc.

Et [*alii*] econtra.

III.¹

Cosinage.

Iohan le fuitz Iames porta vn bref de cosinage vers le Prior de Kirkham et demaunda .x. marchatas de rente et dist qe son cosin morust seisi etc.

Scrop. Nous tenoms lez tenementz dount il cleyme cest rente estre issaunt de luy par les seruices de x. mars par an et veetz si fin qe tesmoigne et desicome nous sumes son tenaunt et cest vn precipe quod reddat qe ne gist nent entre seigneur et tenant de rente seruice iugement si a cesti bref deit il estre respondu.

Denum. Nostre cosin morust seisi prest del auerer si vous le voletz desdire.

Berr. Si ceo fu rente charge vous auerietz ascune resoun pur vous mes il mette auaunt fin qe tesmoigne qe ceste rente seruice pur quele rente vous poetz destreindre si vostre auncestre fu seisi pur la limitacioun del bref de nouele disseisine et si auaunt le temps vous auetz bref de custumes et dez seruices et chescun bref deit tenir leu et seruir en sa nature par qey a cesti bref ne deuetz estre respondu.

Denum. Nous clamons auer la rente sulom purporte de la fin et tendoms dauerer qe nostre auncestre morust seisi et si ieo vy deus voyes si pas ieo eslire a quele ieo me voile prendre iugement etc.

Scrop. Si vous seetz resceu a cesti bref vous luy toudretz plusours auauntages qe luy sont donez de ley de terre qe si vous fusetz a la distresce et vous auouisetz pur seruices areres il poeit desclamer on dire rien arere et si ne poet il nrye en cesti bref par q' y il semble qil ne deit a cesti bref estre respondu.

¹ Text of (III) from E.

BEREFORD C.J. If you recover now [by this writ] you will never get other assize, for you can distrain for the rent ; but by this recovery you will never be able to distrain for the arrears, for you will recover naught but the principal etc.

Denham. That is true, but we should recover damages in lieu of arrears etc., as in the case of novel disseisin.

And the writ was afterwards ruled good.

Burton. She did not die seised, ready etc.

And issue was joined.

III.

Cosinage.

John, the son of James, brought a writ of cosinage against the Prior of Kirkham and claimed a rent of ten marks and said that his cousin died seised etc.

Scrope. We hold the tenements, from which this rent that he claimeth issueth, of him by the services of ten marks a year, and see here a fine in witness ; and since we are his tenant and this writ is a *precipe quod reddat* which lieth not between lord and tenant for rent service, judgment whether he ought to be answered to this writ.

Denham. Our cousin died seised ; ready to aver it if you want to deny it.

BEREFORD C.J. If this were a rent charge you would have something to say for yourself ; but he proffereth a fine which witnesseth that this is rent service, and for that rent service you can distrain if your ancestor were seised within the time limited for a writ of novel disseisin ; and, if before that time, you have the writ of customs and services ; and each writ ought to keep its proper place and be used according to its nature, and so you ought not to be answered to this writ.¹

Denham. We claim to have the rent in accordance with the purport of the fine, and we offer to aver that our ancestor died seised ; and if I see two ways [of proceeding] I may choose which I will take. Judgment etc.

Scrope. If you were received to this writ you would deprive the defendant of several advantages which are given to him by the law of the land ; for, if you had distrained and were avowing for services in arrear, he could disclaim or say that naught was in arrear ; but he cannot do so under this writ, and therefore it seemeth that the plaintiff should not be answered to this writ.

¹ But the writ was upheld.

Denum. Sil deist rein arere cele excepcioun auereit la force de excepcioun dareyne seisine qe par taunt supposereit il nous estre seisi apres la mort nostre auncestre la quele excepcioun si gist bien en cesti bref iugeinent.

IV.¹

De chosinage.

Thomas le fiz Iames porta son bref de chosinage vers le priour de Kirkham et demaunda vij. marche de rente en Kirkeby en tien dale et counta de la seisine vne Amies sa auncestre chosine en ceste manere de Amies resorty le fee et le demeyn etc. a Ricard com a chosin et leyre frere William pier Elizabet mier Ameis de qy il prent son tittle de ricard descendit le fee et le demayn a Iames com a fiz et heyre de Iames a Thomas qe ore demaunde.

Scrop. Nous vous dioms qe en le tens le roy Edward qy mort est sei leua vne fine a Euerwik deuant etc. entre William priour de Kirkeham de vne parte pleygnaunt et rauf et Elizabet sa feme auncestre Ameis de qy seisine il ad ore counte de autre parte deforeciaunt de vn mies et deux boues de tere en Kirkeby Ouerdale cest a sanoir qe robert [sic] et Elizabet conesaient les tenementz contenuz en bref estre le dreyt le priour et ceux ly rendit [sic] en court les priours et ses successours a tenyr de Elizabet et ses heyres par vn fe ferme de vj. mars par an issi qe nous tenoms de ly ceux tenementz ou il est seigneur et nous tenaunt et par la ou seruices sont areres naturellement gist destresce pur le seigneur par qay demaundoms ingement de ceo precipe.

Denom. Nous auoms dit qe nostre chosin murust seisi en son demayn com de fee et nous sumes plus procheyn hayr par qay nous auoms assez dit pur tittle en ceo bref de chosinage quele chose vous ne deditez poynt par qay nous prioms seisine de cest rent.

Scrop. Vous destreyndrez pur cest rent et a doner power al viconte a destreynder ou vous le feez [sic] mayme ley nel seoffra point.

Burtone. Nous semble qe par lay ceo bref nest mie mayntenable. qar si il recouerait il ne recouerait fors sulom la nature de la fine mes ore cest fine proue ceste rent estre seruiz dount si il destreignat et vsat la assise il ne recouerait forsque air et si il recouere par ceo bref il recouera damages qe est countre la nature de la rent.

Berr. Si vous recouerez ore par ceo bref power de destresce vous

¹ Text of (IV) from *H.*

Denham. If he said 'naught in arrear,' that exception would have the force of an exception of last seised; for he would thereby infer that we were seised after the death of our ancestor, which exception properly lieth under this writ. Judgment.

IV.

Cosinage.

Thomas, the son of James, brought his writ of cosinage against the Prior of Kirkham and claimed a rent of seven marks in a certain dale in Kirkby; and he counted of the seisin of one Amice his ancestress as cousin in the manner following. From Amice the fee and the demesne etc. resorted to Richard as her cousin and the heir of his brother William that was father of Elizabeth, the mother of Amice, from whom Thomas taketh his title. From Richard the fee and demesne descended to James as his son and heir; from James to Thomas who now claimeth.

Scrope. We tell you that in the time of the King Edward who is dead a fine was levied at York before etc. between William, Prior of Kirkham, of the one part, complainant, and Ralph and Elizabeth, his wife, ancestress of Amice of whose seisin the plaintiff hath now counted, of the other part, deforcients, in respect of a messuage and two bovates of land in Kirkby Overdale, to wit, that Ralph and Elizabeth recognized the tenements named in the writ to be the right of the Prior and surrendered them to him in Court, the Prior and his successors to hold them of Elizabeth and her heirs by a yearly fee farm of six marks; so that we hold of Thomas these tenements, of which he is lord and we are tenant; and, since a writ of distress naturally lieth for the lord when services are in arrear, we therefore ask judgment of this *precipe*.

Denham. We have said that our cousin died seised in her demesne as of fee and we are her next heir. We have said enough, therefore, to entitle us to this writ of cosinage; and as you do not deny this, we therefore pray seisin of this rent.

Scrope. You can distrain for this rent, and the law will not allow the Sheriff to be ordered to do that which you can do yourself.

Burton. It seemeth to us that this writ is not maintainable by law; for, if the plaintiff recovered, he would only recover according to the tenor of the fine; but this fine proveth that this rent is rent service. If, then, he were to distrain and were to use the assize he would recover naught but wind, while if he recover by this writ he will recover damages, which is contrary to the nature of rent.

BEREFORD C.J. If you recover now by this writ you forfeit all

est tolle il vous graunt destre seigneurie [*sic*] et qant qe est pur vous et si vous recouerez par ceo bref vous nauerez iammes fealte.

Scrop. Veez cy fine qe tesmoygne qe ceo qe est en demaunde est rent seruiz quel chose il ne purront dedire et si ils fussaient resceu a tiel bref mayntenyr countre la nature de la rent damages vous acresterait par taunt qe il recouerait damages ou il nauoit forsqe air encountre la nature du dreyt qe demoert en sa persone a ceo qe la fine proue qe est de recorde iugement si altre recouerer deiue mayntener qe nature de la rent qe est compris deynz la fine poet soeffrer.

Denom. Nous desclamoms en la rent sulom la nature de la fine.

Scrop. Desclamez vous en la rent.

Denom. Nanil mes sulom la nature de la fine.

Berr. Est ceo rent seruiz ou ne mie fut la terre done en la manere qe la fine prone ou ne mie.

Et *Denom* non potuit hoc dedicare mes il dit qe le mortdancestor luy serueroit et par consequent chescun bref en son eas de possessioun et sumes a vos iugementz de ceo bref si il esteira ou ne mie.

Berr. Pur ceo qe conu est tutez partez qe il est procheyn beyr et ne poet estre dedit qe la chosine ne morust seisi en son demeyne com de fee qe suffit pur le demaundaunt en ceo bref de possessioun agarde cest court qe le bref estoise et qe Thomas recouere seisine de cest rent mes vn desauauntage ad il ceste a sauier qe il est oghte de seigneurie a touz iours qar nul home ne poet deneer le demaundant a eslier ses damages en sa cause demayne.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II, (No. 207), r.297d., Yorkshire.

Thomas filius Iacobi Corbet per Thomam de Milford attornatum suum petit versus Priorem de Kyrkham sex marcas redditus cum pertinenciis in Multhorpe in Cranedale de quibus Agnes filia Elizabeth filie Willelmi Corbet consanguinea predicti Thome cuius heres ipse est fuit seisisita in dominico suo vt de feodo die quo obiit etc. Et inde dicit quod predicta Agnes consanguinea etc. fuit inde seisisita in dominico suo vt de feodo tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo inde

power to distrain. The defendant admits that you are lord with all the advantages of lordship, but if you recover by this writ you will lose your right to fealty.

Scrope. See here the fine which witnesseth that that which is claimed is rent service, and they cannot deny it; but if they were received to maintain this writ, against the nature of rent, damages might be awarded them and so he would recover damages, where he hath naught but wind [behind him], against the nature of the right which reposeth in his person, as the fine which is of record proveth. Judgment whether he ought to maintain any other recovery than that which the nature of the rent as set out in the fine admitteth of.

Denham. We disclaim in the rent as conditioned by the fine.

Scrope. Do you disclaim in the rent?

Denham. No; but as it is conditioned in the fine.

BEREFORD C.J. Is this rent service or not? Was the land granted in the manner witnessed by the fine, or was it not?

And *Denham* could not deny this, but he said that the mortdancestor would serve the plaintiff's purpose, and consequently, in his circumstances, any possessory writ; and we ask your ruling as to this writ, whether it shall stand or not.

BEREFORD C.J. Seeing that it is admitted by all parties that the plaintiff is next heir, and that it cannot be denied that the cousin died seised in her demesne as of fee, which is sufficient for the plaintiff in this possessory writ, this Court giveth judgment that the writ stand and that Thomas recover seisin of this rent; but he incurreth one disadvantage, to wit, that he hath lost his lordship for ever, for neither the claimant nor any man can be entitled to assess the damages in his own cause.²

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 297d., Yorkshire.

Thomas, son of James Corbet, by Thomas of Milford, his attorney, claimeth against the Prior of Kirkham a rent of six marks, with the appurtenances, in Milthorpe in Cranedale, of which Agnes, daughter of Elizabeth that was daughter of William Corbet, cousin of the aforesaid Thomas, whose heir Thomas is, was seised in her demesne as of fee on the day on which she died etc. And thereof he saith that the aforesaid Agnes, cousin etc., was seised thereof in her demesne as of fee in time of peace, in the time of the lord Edward the King, father of the lord King that now is, taking esplees thence to the

^{1,2} The text is very obscure and probably corrupt, and the translation given above is conjectural. The mean-

ing seems to be that the plaintiff cannot pick and choose what he will gain and what he will not lose.

Note from the Record—continued.

explecias ad valenciam etc. et inde obiit seisita etc. et de ipsa Agnete quia obiit sine herede de se resorciebatur feodum etc. cuidam Ricardo fratri cuiusdam Willelmi patris cuiusdam Elizabethhe matris predictae Agnetis et de ipso Ricardo descendit feodum etc. cuidam Iacobo vt filio et heredi et de ipso Iacobo isti Thome qui nunc petit vt filio et heredi et de quibus etc. Et inde producit sectam etc.

Et Prior per Stephanum de Kennerthorpe attornatum suum venit et dicit quod non debet ad hoc breue respondere quia dicit quod alias in Curia domini Henrici Regis aui domini Regis nunc In octabis sancti Hillarii anno regni sui sexto coram Siluestro Episcopo Karliensi et sociis suis Iusticiariis Itinerantibus apud Eboracum leuauit quedam [sic] finis Inter quemdam Rogerum quondam Priorem de Kyrkham predecessorem ipsius Prioris querentem et Radulphum de Bethuni et predictam Elizabetham tunc vxorem ipsius Radulphi deforcientes de duodecim bouatis terre et dimidiam cum pertinenciis in predicta villa vnde placitum conuencionis summonitum fuit inter cos etc. per quem finem iidem Radulphus et Elizabetha recognouerunt predicta tenementa eum pertinenciis esse Ius ipsius Prioris et ecclesie sue predictae vt illam quam idem Prior et ecclesia sua predicta habuerunt de dono predictorum Radulphi et Elizabethhe tenenda eidem Priori et successoribus suis et ecclesie sue predictae de predictis Radulpho et Elizabetha et heredibus ipsius Elizabethhe ad feodum firmam imperpetuum reddendo inde per annum sex marcas argenti ad festum sancti Michaelis et faciendo inde capitalibus dominis feodi illius pro predictis Radulpho et Elizabetha et heredibus ipsius Elizabethhe forinsecum seruicium quod ad predictam terram pertinet pro omni seruicio consuetudine exaccione etc. vnde desicut per finem predictum liquet manifeste quod idem Prior est tenens ipsius Thome de predictis tenementis in eodem fine contentis et conueniencius accio competeret eidem Thome in predictis tenementis distringere pro predicto reddito tanquam pro reddito seruicio prout moris est inter tenentem et dominum distringentem et nichilominus idem Thomas suum habet recuperare per breue de consuetudinibus et seruiciis quod naturaliter competeret in hoc casu petit iudicium si ad huiusmodi breue debeat responderi etc.

Et Thomas dicit quod breue suum in hac parte cassari non debet dicit enim quod predictus prior est deforeiens suus de predicto reddito et idem Prior non potest dedicere quin predicta Agnes consanguinea etc. de eodem reddito obiit seisita in dominico suo vt de feodo [et] petit iudicium etc. Et super hoc dictum est eidem Priori quod respondeat etc. et idem Prior petita licencia inde loquendi dicit quod non potest dedicere quin predicta Agnes consanguinea etc. obiit seisita de predicto reddito in dominico suo vt de feodo sicut predictum est Ideo consideratum est quod predictus Thomas recuperet predictum redditum et idem Prior in misericordia etc.

Note from the Record—*continued.*

value etc., and died seised thereof etc.; and from that Agnes, because she died without heir of her body, the fee etc. resorted to a certain Richard, brother of a certain William that was father of a certain Elizabeth, mother of the aforesaid Agnes; and from that Richard the fee etc. descended to a certain James as son and heir, and from that James to this Thomas, who now claimeth, as son and heir, and of which etc. And thereof he produceth suit etc.

And the Prior, by Stephen of Kenyethorpe, his attorney, cometh and saith that he ought not to answer this writ, because he saith that at other time in the Court of the lord Harry the King, grandfather of the lord King that now is, in the octaves of St. Hilary in the sixth year of his reign, before Silvester, Bishop of Carlisle, and his companions, Justices in Eyre, at York, a certain fine was levied between a certain Roger, aforesaid Prior of Kirkham, predecessor of this Prior, complainant, and Ralph of Beetham and the aforesaid Elizabeth, then wife of the same Ralph, deforcients, in respect of twelve bovates and a half of land, with the appurtenances, in the aforesaid vill, whereof a plea of covenant was summoned between them etc., by which fine the same Ralph and Elizabeth recognized the aforesaid tenements with the appurtenances to be the right of the said Prior and of his aforesaid church as that which the same Prior and his aforesaid church had of the grant of the aforesaid Ralph and Elizabeth to hold to the same Prior and to his successors and to his aforesaid church of the aforesaid Ralph and Elizabeth and the heirs of the same Elizabeth at a fee farm for ever, rendering therefor six marks of silver every year on the Feast of St. Michael, and rendering to the chief lords of that fee, on behalf of the aforesaid Ralph and Elizabeth and the heirs of the same Elizabeth, the forinsec service which appertaineth to the aforesaid land, for all services, customs, exactions etc. And touching this, since it appeareth clearly from the aforesaid fine that this same Prior is the tenant of this same Thomas of the aforesaid tenements named in the same fine and that the same Thomas might more properly proceed by way of distrainment in the aforesaid tenements to recover the aforesaid rent as rent service as is customary between a tenant and a distraining lord, and that the same Thomas hath also his recovery by a writ of customs and services, which naturally lieth in these circumstances, the said Prior asketh judgment whether to a writ of this kind the plaintiff ought to be answered.

And Thomas saith that his writ ought not for these reasons to be quashed, for he saith that the aforesaid Prior is his deforcer of the aforesaid rent, and that the aforesaid Prior cannot deny that the aforesaid Agnes, cousin etc. died seised of the same rent in her demesne as of fee, and he asketh judgment etc. And upon this the same Prior is told to answer etc.; and the same Prior, leave having been had to argue thereof, saith that he cannot deny that the aforesaid Agnes, cousin etc., died seised of the aforesaid rent in her demesne as of fee, as is aforesaid. Therefore it is considered that the aforesaid Thomas recover the aforesaid rent and the same Prior be in mercy etc.

27. CALWICK v. FERRERS.¹I.²

Vne Isabelle porta bref de cosynage vers vn Robert de la mort Thomas soun cosyn fesant la resort de Thomas a Isabelle com a aunte seor Thomas pere Thomas de qi seisine ele demaunde.

Scrop. Apres la mort Thomas nostre frere qe morust seisi de ceus tenementz com de fee nous entrames com frere et eynz sumes com heir et deynz age et prioms nostre age.

Denom. Thomas nostre frere espoca Isabelle de quel Isabelle il nauoit fiz ne fille si noun cely Thomas de qi nous pernoms nostre accioun dount demaundoms iugement si vous qe estes entre com nostre tollour deuez vostre age auer.

Scrop. Vostre conclusion veot qe nous sumes entre cum tollour la quele conclusion ne proue mye vostre premisses par qei vostre respouns est nul et prioms nostre age.

Denom. Nous vous dioms qe en tens le Roi Richard vn Thomas nostre auncestre fut seisi de ceus tenementz en soun demene com de fee apres qi mort entra vn R. et morust seisi apres qi mort Thomas nostre frere entra le quel Thomas autre engendrure nauoit si noun Thomas de qi seisine nous demaundoms dount nous demaundoms iugement si saunz ceo qe vous vous facez frere a ascun des heirz Thomas qe sunt nomez en la lyn et engendre de mesme le pere et mesme la mere qe sil seit autre il est nostre tollour si vous deuez vostre age auer.

Herle. Vostre resoun proue uostre resort bien mes il ne proue mye qe nous ne deuons nostre age auer.

Migg. Si le age ly seit graunte par cele cause com il prie quant il vendra a soun age nous serroms barre de accioun par qei nous nentendoms mye qil deit soun age auer.

Berr. En tant greignour mestre est a dire par qei il ne deit son age auer.

Stonor. Par ceste parole heir volez vous vostre age auer mes ceo qe vous auez dit ne vous proue mye heir sanz ceo qe vous diez qe vous estes frere Thomas nee et engendre de mesme le pere et de mesme la mere et ceo nauez pas dit par qei etc.

¹ Reported by C, D, E, and H. Names of the parties from the Plea Roll.

² Text of (I) from C.

27. CALWICK v. FERRERS.¹

I.

One Isabel brought a writ of cosinage against one Robert of the death of Thomas, her cousin, making the resort from Thomas to Isabel as to aunt, being sister of Thomas that was father of the Thomas of whose seisin she claimeth.

Scrope. After the death of Thomas, our brother,² who died seised of these tenements as of fee we entered as brother and are in seisin as heir, and we are within age and we pray our age.

Denham. Thomas, our brother,³ espoused Isabel.⁴ By that Isabel he had neither son nor daughter save that Thomas from whom we derive our right of action. We ask judgment, then, whether you, who have entered as our tollor, ought to have your age.

Scrope. Your conclusion maketh us to have entered as tollor, but your premises do not prove that conclusion; and therefore your answer is naught, and we pray our age.

Denham. We tell you that in the time of the King Richard one Thomas, our ancestor, was seised of these tenements in his demesne as of fee; and, upon his death, one R. entered and died seised. Upon the death of R., Thomas, our brother, entered; which Thomas had no other issue than the Thomas of whose seisin we are claiming. We ask judgment, therefore, whether you ought to have your age unless you make yourself brother to some heir of Thomas named in the line [of succession] and gendered of the same father and the same mother; for if the defendant be any other he is our tollor.

Herle. Your argument is in good proof of your resort, but it doth not prove that we ought not to have our age.

Miggeley. If his age be allowed him for the reason for which he prayeth it, then, when he shall get to his age, we shall be barred from our action. Therefore we do not think that he ought to have his age.

BRETFORD C.J. That is all the greater reason why you should say why he ought not to have his age.

Stonor. You want to have your age on the ground that you are heir, but what you have said doth not prove that you are heir, unless you say that you are the brother of Thomas, born and gendered of the same father and the same mother; and that is what you have not said, and therefore etc.

¹ See the Introduction, p. xlv above.

² i.e. the tenant's brother.

³ i.e. the claimant's brother.

⁴ Not to be confused with Isabel the claimant.

Herle. Vous dites talent qe la ou nous dioms qe nous sumes frere et eynz ley entent qe nous sumes heir saunz ceo qe vous defaiez qe nous ne poms heir est par resoun mez ceo ne fetez mye par qei par ceo .ij. paroles frere et heir nous byoms nostre age auer. Et de autre part si ieo deisse qe ieo fu frere et einz com heir et elamasse par mesme la descente serreit il respouns a dire clamer ne poez sanz ceo qe il se face frere nee et engendre de mesme le pere et de mesme la mere certes non serreit auxi de ceste parte.

Scrop. Si vous ly volez oster de soun age il le vous couent fere tolour care enfaunt deynz age ne sciet conustre de autri pere ne de autreiy mere.

Berr. Le quel est il tut de vn Thomas dount vous parlez ou ne mye.

Toud. Ceo nauoms mestre a dire care nous auoms fet nostre respouns solom ceo qe ley nous donne.

Berr. Il couent qe nous sauoms pur ceo qe si il est autre Thomas non est dubium qe il nauera soun age et si mesme cely Thomas donk cherreit il en discreccioun dez Iustices.

Herle. Ceo est a eux a dire pur ceo qe cest lour auantage.

Et pus dit *Scrop* qe ceo est mesme cesti Thomas.

Denom. Thomas le pere Thomas auoit .ij. femmes de la primere auoit il Thomas de qi seisine etc. de la seconde femme Robert qe est eynz et demaundoms iugement si cely qe est de saunk partie a qi nul heritage Thomas de ley put descendre et qe entra com nostre tollour deit soun age auer.

Scrop. Et nous iugement desicom vostre respouns chet a trier lentierete del sauuk a qei trier duraunt nostre nounage nous ne poms estre partie si nostre age ne deuoms auer.

II.¹

Richard de Calwyk et Margerie sa femme porterent bref vers Iohan de Forses de Chepher et demaunda la moyte del maner de Calkewyk etc. de la seisine Thomas Cosyn Margerie qe morust seisi etc. et fit

¹ Text of (II) from *D*.

Herle. You are talking at random, for when we say that we are brother and are in seisin the law doth conclude that we are heir unless you can show by good reason that we cannot be heir, but you do not show that; and therefore by these two words—brother and heir—we claim to have our age. And, further, if I should say that I was brother and was in seisin as heir and should claim [to hold] by the same descent [as that on which the claimant relieth] would it be any answer to say that I¹ cannot claim unless I make myself brother, born and gendered of the same father and the same mother? Certainly not. So in this case.

Scrope. If you want to bar him from his age you must make him a tollor, for an infant within age cannot make admission of being born of other father or other mother.

BEREFORD C.J. Are you both speaking of the same Thomas or not?

Toudeby. It is not our business to say, for we have made our answer in accordance with the form provided by law.

BEREFORD C.J. But we must know, because, if there be another Thomas, then it is certain that the defendant cannot have his age; and if he be the same Thomas, then the matter will lie in the discretion of the Justices.

Herle. It is for the other side to say, because they will have the benefit of it.

And *Scrope* afterwards said that this is the same Thomas.

Denham. Thomas, the father of Thomas, had two wives. Of the first he had the Thomas of whose seisin etc.; of the second wife he had Robert who is in seisin; and we ask judgment whether one who is of the half blood, to whom naught of Thomas's heritage can descend and who entered as our tollor, ought to have his age.

Scrope. And we ask judgment whether we ought not to have our age seeing that your answer goeth to try the entirety of the blood, and that we cannot be party to such trial during our nonage.

II.

Richard of Calwick and Margery, his wife, brought a writ against ²John of Ferrers of Loxley³ and claimed a moiety of the manor of Calwick etc. of the seisin of Thomas, Margery's cousin, who died seised etc.; and

¹ I have changed the person of the pronoun for the sake of lucidity.

²⁻³ Corrected from the Record.

le presort [sic] De Thomas pur ceo qe etc. resorti a Margerie com a Aunte etc. soer Thomas pere Thomas etc.

Scrop. Sire nous vous dioms qe apres la mort vn Thomas de Ferreres qe murut seisi etc. entrames com frere et heyr et eynz sumes deynz age et prioms nostre age.

Denom. Nous vous dioms qe vn Thomas nostre frere de ceux tene-mentz fut seisi qe prist femme vne Elizabet de la quel il engendra vn Thomas de qi seisine etc. qe morust seisi saunz heyr de son corps et nauoit frere ne soer de mesme le pere ne de mesme la miere issy qe la reuersion a nous com a cele qest plus prochein heir de lentier saunk etc. issynt qe vous estes entre etc. com nostre tolour iugement si vous deuez vostre age auer.

Scrop. Vous ne poez dire qe nous sumes entre com vostre tolour qe nous auoms dit qe nous sumes eynz cun frere et heyr douns [sic] qe vous nous volez fere tolour il vous couent nous estraunger com a dire qe nous sumes Bastard etc.

Stontone [sic]. Assez vous auoms estraunge qe nous auoms dit qe Thomas nostre frere engendra de Elysabet etc. Thomas nostre Cosyn qe murut seisi qe nauoit frere ne soer de mesme le pere ne de mesme la miere et si issy seit vous ne poetz heyr estre a ly par qei assez vous auoms estraunge et fet tolour.

Scrop. Vous mustrez coment vous estes heyr de lentier saunk issy qe le dreyt est aresorti a vous mes vous ne mustrez pas coment il est vostre tolour de fere ly estraunge com bastarder le ou oustre le de son clamer.

Ston. Nous luy oustoms qil ne put heyr estre vt supra.

Berr. Vngore nestes pas a vn le quel mesme cely Thomas apres qi mort il dit qil entra com frere et heyr etc. et est seisi soit mesme cely Thomas de qi seisine la femme demaunde ou estraunge qe la resoun est autre en lun cas et en lautre qe cy sely Thomas apres qi mort il entra com frere etc. fuit estraunge et murut plus tard etc. il nest pas doute qil nauera son age et sil seit mesme cely lagarde ne serra mye si cort.

Herele. Le quel qil seit mesme cely ou vn estraunge il auera son

they made the resort from Thomas, because etc., resorted to Margery as aunt etc., being the sister of Thomas that was father of Thomas etc.

Scrope. Sir, we tell you that after the death of one Thomas of Ferrers, who died seised etc., we entered as brother and heir and are in seisin. We are within age and we pray our age.

Denham. We tell you that one Thomas, our brother, was seised of these tenements and took to wife one Elizabeth of whom he begat one Thomas, of whose seisin etc., who died seised without issue of his body and had neither brother nor sister of the same father and the same mother, so that the reversion was to us as the next heir of the whole blood etc. Since you entered etc. as our tollor, judgment whether you ought to have your age.

Scrope. You cannot say that we entered as your tollor, for we have said that we are in seisin as brother and heir. If, then, you want to make us your tollor, you must estrange us [from the blood], as by saying that we are a bastard etc.

Stonor. We have sufficiently estranged you, for we have said that Thomas, our brother, begat of Elizabeth etc. Thomas, our cousin,¹ who died seised, who had neither brother nor sister of the same father and the same mother; and, if this be so, you cannot be his heir, and, therefore, we have sufficiently estranged you and made you our tollor.

Scrope. You show how you are the heir of the whole blood so that the right resorted to you, but you do not show how the defendant is your tollor, by estranging him, as by making a bastard of him or ousting him from a right to claim.

Stonor. We oust him [by showing] as above that he cannot be heir.

BEREFORD C.J. Again, you are not agreed whether the Thomas, after whose death the defendant saith that he entered as brother and heir etc., and is seised, is the same Thomas as the Thomas of whose seisin the wife² claimeth or a stranger; and the points for our consideration are different in the two cases, for if this Thomas, upon whose death the defendant entered as brother etc. were a stranger and died later etc., there is no doubt that the defendant will have his age allowed; while if he be that Thomas [of whose seisin the wife claimeth] the Court will not be so speedy in giving its judgment.

Hiclle. Whether he be that same Thomas or a stranger, the

¹ Nephew, in fact. For the use of 'cousin' in this sense see *Year Book Series*, vol. xii. p. xl. And see also *Year Books* (Rolls Series), 15 Edw. III., p. 373, where Kelsbulla J. says: 'When one passes above the great-grandfather, there is no other form but to call the ancestors

cousins; for King John, the great-great-grandfather of the present King, is in Latin called cousin.'

² i.e. Margery, wife of Richard of Calwick. The husband was necessarily joined as co-claimant.

Scrop. Et nous iugement si depus qe vous auez conu qe Thomas le pere fut seisi et qe Iohan est frere Thomas de mesme le pere et eyns est il ne deyue son age auer.

Berr. Ore auez conu vostre fet et si vous ne ly vssez conu par cas nous vssoms lage et sil lage vst este grauntee sur vostre primer plee vous vssetz este barre pur touz iours.

Dies datus est in crastino Purificacionis etc.

III.¹

Cosinage.

Richard de Kalwik et Margarete sa femme porterent vn bref de Cosinage vers Iohan le fuitz Thomas de Ferrers et diseient qe vn Thomas Cosin lauauindite Margarete fur seisi del Maner de Lobeley et firent la resort de Thomas a Margarete come a aunt et heir seore Thomas pere Thomas.

Scrop. Nous vous dioms qe vn Thomas nostre frere fu seisi de cez tenemenz et morust seisi apres qy mort nous sumes entre ceux tenemenz come frere et heir mesme cesti Thomas et sumes deynz age et prioms nostre age.

Denum. Nous auoms dit qe Thomas nostre cosin fut seisi de cez tenemenz et morust seisi apres qy mort les tenemenz nous deyuient resortir come a celi qest heir del saunk issi qe vous nestes qe ocoupour apres la mort nostre cosin iugement si vous qe nestes qe tolour deuiez vostre age auoir.

Berr. Descouerez vostre cas il semble par vos resons qe vous purrez vostre age del estat celui de qy il pernent lur titil.

Herle. Nous nauoms altre choce a faire forge a dire qe nostre auncestre fu seisi et morust seisi apres qy mort nous sumes entre come heir sil voient dire qe nous ne sumes pas heir dient et nous les respoudrons.

Denum. Thomas nostre frere fu seisi de cez tenemenz et esposa vne Elizabeth de qy il nauoit engendrure fuitz ne file forge Thomas de qy nous pernoms nostre titil le quel Thomas entra apres la mort Thomas son pere com fuitz et heir et morust seisi issi qe luy et cez

¹ Text of (III) from E.

Scrope. And we ask judgment whether, since you have admitted that Thomas, the father, was seised, and that John is brother of Thomas [the son] by the same father and is in possession, he is not entitled to have his age.

BEREFORD C.J. Now you have admitted the facts of your case ; and if you had not admitted them we might have [granted] the age, and if the age had been granted upon your first plea you would have been barred for ever.

A day is given them on the Morrow of the Purification etc.

III.

Cosinage.

Richard of Calwick and Margaret, his wife, brought a writ of cosinage against John, the son of Thomas of Ferrers, and said that one Thomas, cousin of the aforesaid Margaret, was seised of the manor of Lobley ; and they made the resort from Thomas to Margaret as to aunt and heir, being sister of Thomas that was father of Thomas.

Scrope. We tell you that one Thomas, our brother, was seised of these tenements and died seised, after whose death we entered these tenements as brother and heir of that same Thomas, and we are within age and we pray our age.

Denham. We have said that Thomas our cousin¹ was seised of these tenements and died seised, after whose death the tenements ought to resort to us as to the one that is heir of the blood ; and you, therefore, are naught but an occupier² since the death of our cousin. Judgment whether you that are naught but a tollor are entitled to have your age.

BEREFORD C.J. State your case fully. From your arguments it seemeth that you might be entitled to have your age, from the nature of the estate of him from whom the claimant taketh her title.

Herle. We have naught more to do beyond saying that our ancestor was seised and died seised, and that after his death we entered as heir. If they want to say that we are not heir, let them say so, and we will answer them.

Denham. Thomas our brother was seised of these tenements and espoused one Elizabeth by whom he had no child, neither son nor daughter, save only Thomas, from whom we take our title ; which Thomas entered after the death of Thomas his father, as son and heir,

¹ See note 1, p. 157 above.

² Note the use of this word in its original general sense of one who seizes

land and maintains adverse possession.

The military sense of the word still remains the same.

auncestres ount tenu ceste terre qest en demande de tens dount il nyad memore saunz ceo qe altre morust seisi et auoms fet la resort de Thomas a nous come en lenter saunk et vous nestes forqe nostre tolour iugement si vous deuetz en ceo cas vostre age attendre.

Herle. Vous dites qe les tenemenz vous deyuent ressortir apres la mort Thomas et ceo suppose vostre count qe nest nule ren a nous et nous dioms qe nostre frere morust seisi et sumes entre come heir et sumes deynz age et ceo ne poez desdire et demandoms iugement.

Scrope. Si vous volez dire qe nous ne sumes maye frere Thomas ou altre nounablete assignez en nostre persone nous vous respoundrons.

Scrope I. Si il deist qe Geoffrey de Toutheby morust seisi de cez tenemenz et il fu entre com frere et heir et fu deinz age nauereit il son age.

Herle. Mesme cesti Thomas de qy il pernent lur titil morust seisi de cez tenemenz apres qy mort nous sumes entre cez tenemenz come frere et heir mesme cesti Thomas et sumes deynz age et prioms nostre age.

Mig. Nous pernomis nostre titil de la seisine Thomas et il prient lur age del estat mesme cesti Thomas com frere et heir ¹mesme cesti² Thomas en quel cas si lur age fu graunte nous les estraungerom pas altre foitz de cest heritage qe la Court le tendra auxi come a graunte qil est heir Thomas de qy etc. iugement si a si graunt meschef deyuent il lur age auoir.

Berr. Estraungez les dounk dites pur quey il ne poent estre heir Thomas.

Denum. Thomas nostre frere esposa vne Elizabeth de qy il nengendra fuitz ne file forqe cesti Thomas de qy etc. Sa femme morust et il prist altre femme de qy il engendra cesti Iohan vers qy etc. et apres la mort Thomas entra Thomas son fuitz com fuitz et heir et morust seisi apres qy mort les tenemenz deyuent ressortir en lenter saunk saunz ceo qe celui qest de altre ventre et nemye del enter saunk purra rien clamer et nous sumes aunt et heir mesme cesti Thomas del enter saunk et vous estes nostre tolour et de vn altre ventre iugement si vous deuez vostre age auer.

Scrop. Il ad counte qe Thomas nostre pere morust seisi de cez tenemenz et qe Thomas son fuitz entra com fuitz et heir apres qy

¹⁻² Expuncted for erasure.

and he died seised ; so that he and his ancestors have held this land which is in demand from a time beyond memory without any other having died seised of it ; and we have made the resort from Thomas to ourselves in the line of the whole blood, while you are naught but our tollor. Judgment whether in these circumstances you are entitled to await your age.

Herle. You say that the tenements ought to resort to you after the death of Thomas, and your count supposeth as much, but that is naught to us, and we tell you that our brother died seised and we entered as heir, and we are within age ; and you cannot deny that, and we ask judgment.

Scrope. If you want to say that we are not Thomas's brother or to assign any other inability [of succession] in our person, we will give you answer.

SCROPE J. If he (*i.e.* the defendant) said that Gilbert of Toudeby died seised of these tenements and that he entered as brother and heir and was within age, would he not have his age ?

Herle. This same Thomas from whom they derive their title died seised of these tenements, and after his death we entered these tenements as brother and heir of that same Thomas, and we are within age and we pray our age.

Miggeley. We take our title from the seisin of Thomas, and they pray their age in virtue of the estate of that same Thomas, as brother and heir of that same Thomas ; and if, in these circumstances, their age be allowed we shall not afterwards be able to eject them from this estate of inheritance, for the Court will take it that we have admitted that he is the heir of Thomas of whom etc. Judgment whether he ought to have his age at the cost of such great hardship [to us].

BEREFORD C.J. Then show that he is a stranger [to the succession], and say why he cannot be Thomas's heir.

Denham. Thomas, our brother, espoused one Elizabeth, of whom he gendered no child, neither son nor daughter, save only this Thomas of whom etc. His wife died and he took another wife of whom he gendered this John, against whom etc. ; and after Thomas's death Thomas his son entered as son and heir and died seised ; after whose death the tenements ought to resort to us in the whole blood, without him that is of another *ventre* and not of the whole blood being able to claim aught ; and we are aunt and heir of that same Thomas of the whole blood, and you are our tollor and of another *ventre*. Judgment whether you are entitled to have your age.

Scrope. He hath counted that Thomas our father died seised of these tenements and that Thomas, his son, entered as son and heir,

mort nous sumes entre com frere et heir et a trier le saunk le quel nous sumes del enter saunk ou de saunk partie de pus qe nostre auncestre morust seisi et sumes entre come heir ne ne poms estre partie duraunt nostre nounage et prioms nostre age.

Berr. Le cas est deselos demoretz en iugement.

IV.¹

Cosinage.

Richard de Wodestede et Margaret sa feme porterunt lur bref de Chosinage vers Iohan le fiz Thomas fererz et demaunderunt la moite du maner de graunt lobelay et counterunt de la seisine vn Thomas chosine Margaret qy de ceo en fut seisi en son demeyn com de fee en tens de pees en tens le roy Edward pier etc. les esplez prist com en homage fealtez rentez et arrerages de rentes blez herbages vent du boys et de fuzboys et en autre manere de issue de la moyte du maner moun-taunt a demi marc et a plus com de fee et de demeyn de Thomas resorti le fee et le demayn et deueroit ressortir a Margaret qe ore de-maunde ensemblement od Richard son baron com a aunt et heyr soer Thomas pier Thomas sil voet etc.

Scrop defendit et dit qe Thomas fut seisi en son demeyn com de fee apres qy mort Iohan entra com frer et heyr et eynz est et deynz age et prie son age.

Denom. Nous vous dioms qe Thomas pier Thomas de qy seisine nous auoms counte fut nostre frer et prist vne feme vne Elizabet de qy il engendra Thomas de qy seisine nous auoms counte saunz auer autre engendrure frer ou soer de meym le pier et de meym la mier issi qe ²si nul sait estre³ [*sic*] del lure qe il murust saunz heyr de son cors et saunz auoir frer ou soer de meyme le pier et de meyme la mier par qay nous sumus heyr plus procheyn en le resort si nul sait entre il est entre com nostre tollur et tollur ne dait en nul manere son age attendre.

Herel. Nous dioms qe Thomas nostre frer fut seisi en son demeyn com de fee apres qy mort nous entramus com frer et heyr et eynz sumes et deynz age il vous plede auxi auaunt com il couient pur son estate

¹ Text of (IV) from *H.* ²⁻³ These words are superfluously interpolated here.

after whose death we entered as brother and heir ; and, seeing that our ancestor died seised and we entered as heir, we cannot be party during our nonage to trying the blood, whether we are of the whole blood or the half blood, and we pray our age.

BEREFORD C.J. The case hath been fully stated. Abide your judgment.

IV.

Cosinage.

Richard of Woodstead and Margaret, his wife, brought their writ of cosinage against John, the son of Thomas Ferrers, and claimed the moiety of the manor of Great Loxley¹ ; and they counted of the seisin of Thomas, Margaret's cousin, who was seised thereof in his demesne as of fee in time of peace, in the time of the King Edward that was father etc., taking esplees, as of homage, fealty, rents and arrears of rents, corn, green crops, sale of wood and timber and of other manner of issues from the moiety of the manor amounting to half a mark and more, as of fee and demesne. From Thomas the fee and demesne resorted and ought to resort to Margaret that now claimeth, together with Richard her husband, as aunt and heir, being the sister of Thomas that was Thomas's father. And if he will [deny it, ready] etc.

Scrope denied [Margaret's right] and said that Thomas was seised in his demesne as of fee, and that after his death John entered as brother and heir and is in seisin and is within age, and he prayeth his age.

Denham. We tell you that Thomas, the father of that Thomas of whose seisin we have counted, was our brother ; and he took a wife, one Elizabeth, of whom he begat Thomas, of whose seisin we have counted, without having other child that was brother or sister [of Thomas] gendered of the same father and the same mother ; so that, since Thomas [the son] died without heir of his body and without having had brother or sister by the same father and the same mother, we are, consequently, the next heir in the resort. If any have entered he hath entered as our tollor, and a tollor is in no manner entitled to await his age.

Herle. We say that Thomas, our brother, was seised in his demesne as of fee, after whose death we entered as brother and heir, and we are in possession and are within age ; and we² are pleading to you as

¹ Corrected from the Record.

² Herle changes here from the first person plural to the third person

singular, but the *nous* and the *il* stand equally for John, the defendant

gar ou le auncestre murust seisi et son heyr seit eynz et deynz age suffit a targer le plee taunk son age a dire estat le auncestre ou il est entre com heyr.

Berr. Vostre plee est tut a la procheynte par qay il couient qe vous descloez vostre cas qe nous purroms meuth entendre coment qe vous luy volez fayr tollur.

Stonor. Sire nous vous dioms qe vn Thomas ael Thomas de qy nous pernomms nostre tittle fut seisi des auaunt ditz tenementz et pryst feme Amieys de qy il engendra Thomas et Margaret saunz auer plus de engendrure apres qy mort Thomas nostre frer entra com fitz et heyr et prist feme Elizabet de qy il engendra Thomas de qy nous pernomms nostre tittle saunz auer autre frer ou soer de meyme le pier ou meyme la mier et demaundoms iugement del hur qe ceo voloms auerer si par taunt ceo qe il dit deieue son age attendre.

Berr. Il dit qe il entra apres la mort son frer dites nous si ceo fut cely Thomas de qy il ount counte ou altre.

Toudeby. Ceo est a eux a dire.

Denom. Ceo est a nous a moustrer qar vous volez nostre recouerer par nostre respouns.

Hercl. Nous pledoms auxi auaunt com enfaunt deynz age puyse pleder.

Berr. La court ne la partie ne poet estre apsis de vostre respouns par taunt qe vous dites qe il entra apres la mort Thomas com frer nous ne sauoms si ceo sait cely Thomas de qy il counte ou altre si altre nest pas doute qe il ne attendra son age si cely et il puyse rienz dire countre le targer il attendra son age par qay il couent a ceo respondre.

Denom. De respouns qe il durra serroms nous apsis a quay nous pledoms qar si il die qe ceo est vn altre de qy nous auoms counte la est vne voie de pleder si cely de qy nous auoms counte la est altre voie demaundoms iugement del hour qe nous ne purroms pleder a certeyn fine de plee si ceo ne veigne de vostre respouns si vous ne nous deuez mettre en certeyn.

Hercl. Seit il estraunge ou meyme cely de qy vous auez

befitteth our estate, for where the ancestor¹ died seised and his heir is in possession and is within age, to state the estate of the ancestor and that the defendant hath entered as heir is enough to have the action delayed until he attaineth his age.

BEREFORD C.J. Your plea² turneth wholly on the proximity, and therefore you ought to state your case fully so that we may the better understand how you want to make the defendant a tollor.

Stonor. Sir, we tell you that one Thomas, grandfather of the Thomas from whom we take our title, was seised of the aforesaid tenements and took a wife, Amice, of whom he begat Thomas and Margaret, without having other offspring. Upon his death Thomas, our brother, entered as son and heir and took a wife, Elizabeth, of whom he begat the Thomas from whom we take our title, this same Thomas having neither brother nor sister by the same father and the same mother; and, since we are ready to aver this, we ask judgment whether aught that the defendant hath said entitleth him to await his age.

BEREFORD C.J. He saith that he entered after the death of his brother. Tell us whether this be the same Thomas of whom the claimant hath counted or another.

Toudeby. That is for them to say.

Denham. It is for you to show; for you want to get your recovery upon our answer.

Herle. We are pleading as highly as an infant within age can plead.

BEREFORD C.J. Neither the Court nor the claimant can get a knowledge of the facts from your answer, when you say only that the defendant entered as brother upon the death of Thomas. We do not know whether this Thomas be he of whom the claimant counted or another. If another, then there is no doubt that the defendant will not await his age; if the same, and the claimant cannot give good reason against the delay, he will await his age; and therefore you must answer this question.

Denham. From the answer he shall give we shall learn to what we have to plead; for if he saith that this is another Thomas than he of whom we have counted, then we shall plead in one way. If it be he of whom we have counted, then we shall plead in another way. Since, then, we cannot plead a definite final plea save it be formed upon your answer, we ask judgment whether you ought not to put us in certainty.

Herle. Whether he be a stranger or the same of whom you have

¹ 'Predecessor' would here be more in accordance with modern usage. ² i.e. the claimant's plea.

counte lo effecte est vn cest a dire qe il ne respondra deuaunt son nounage.

Denom. Dunk ditez vous qe ceo est meyme cesti.

Scrop. Nanil mes il respount a ceo qe vous pledez qe si il fut altre ou cesti si aueriez diuerses respouns il vous dit qe nanil qe ceo est vne resoun et vn meyme effecte.

Scrop. Meyme cely de qy vous auez counte fut nostre frer et murust seisi apres qy mort Iohan entra com frer et heyr et enyz est iugement etc.

Denom. Il ne poet entrer en ceo tenementz apres la mort Thomas si noun com tollur ou com heyr com heyr noun pas qar il nest pas de meyme le pier ne de meyme la mier par consequence com tollur et tollur ne dait en nul maner son age attendre.

Herel. Nous auoms dit qe il entra com frer et heyre et enyz est et il ne dyent nient en estraungeaunt nous iugement si nous ne deuoms nostre age attendre.

Denom. Fetez vostre respons plus pleygne et vous serrez bien respondu tost qe la ou vous ditez il entra com frer et heyr si uous ne ditez de meyme le pier et meyme la mier nous semble qe vostre dit nest pas pleygne.

Herel. Si le bastard fut enyz et il deit qe il entra com fiz et heyr et enyz est si il ne deit et muliere il ne respondit pas par vous et si respount il assez qar il apent naturelement a ly qe suyt pur auer la terre a estraunger cely qe sey fet priue a sa desheritaunce.

Scrop iustice. Vous auez dit qe il entra com vostre tollur fetez ly tollur.

Denom. Il nous semble qe assez luy auoms fet tollur.

Migg. Pur les resouns qe nous auoms dit nul tiel purra estre heyr com il est a ceo qe nous auoms dit et uoloms auerer dunk si vous agardestez de attendre son age par taunt serroms nous forclos a demaunder qant il uendroit de age qar a tiel tens il dirroit qe nous portames tiel bref countre luy tanke il fut deynz age ou ly fut ainge de attendre son age qe ne poait estre fet si noun a cely qy fut accepte com heyr del demaundaunt et demaunderoit iugement si accioun purroms auer.

counted the consequence is the same, namely, that the defendant will not answer before his age.

Denham. Do you say, then, that it is the same Thomas?

SCROPE J. No; but to the point of your plea that you would make different answers in the different cases of his being another Thomas and his being the same Thomas he answereth that it is not so; that the argument [you have to meet] and its effect are the same [in both cases].

Scrope. That same Thomas of whom you have counted was our brother and died seised. After his death John entered as brother and heir and is in seisin. Judgment etc.

Denham. He could not enter into these tenements after Thomas's death save either as tollor or as heir. He could not enter as heir, for he is not of the same father and the same mother. Consequently [he entered] as tollor; and a tollor hath not a shadow of right to await his age.

Herle. We have said that he entered as brother and heir and is in seisin, and the plaintiff saith naught that goeth to our estrangement. Judgment whether we are not entitled to await our age.

Denham. Make your answer complete and we will give you speedy answer back; for, when you say that the defendant entered as brother and heir, and do not say that he was of the same father and mother [as John], we submit that your answer is not complete.

Herle. If a bastard be in seisin and he say that he entered as son and heir and that he is in seisin, according to you he would be making no answer at all unless he say also that he is legitimate, and yet he would have made a sufficient answer, for it is naturally for him that bringeth action to recover the land to turn out of his inheritance him that maketh himself of the blood by showing that he is a stranger to it.

SCROPE J. You have said that he entered as your tollor. Prove him a tollor.

Denham. We submit that we have sufficiently proved him a tollor.

Miggeley. For the reasons we have stated none such as the defendant could be heir, and what we have said we are ready to aver. If, then, you rule that he shall await his age, we shall thereby be barred from our claim when he cometh of age; for at that time he will tell us that we brought this writ against him while he was within age and that the Court ruled that he should await his age, a ruling which could not have been given unless he had been admitted by the claimant to be the heir, and he would ask judgment whether we could have any ground for our action.

Berr. Si uous fussez en vne bastardie et le bastard fut eynz et deit qe il fut eynz com fiz et heyr il couendrait qe vous daissez qe bastard ou nasquit deuaunt etc. auxi ey vous ditez qe tollour ditez nous coment ou com estraunge ou com bastard ou com de vn autre uentre ou coment qar vous ne pledez nient si vous ne diez coment tollur mes touz iours resortez a nostre counte et pur ceo pledez.

Denom. Sire nous uous dioms qe eely Thomas nostre frer esposa vne feme Elizabet de qy il engendra Thomas de qy seisine nous auoms counte saunz auoir altre engendrure de luy ou fiz ou fyle Elizabet deuia et prist altre feme Ceyle de qy il engendra Iohan a qy heritage ne deit descendre pur ceo qe il est del altre uentre et demaundoms iugement depuys qe il ne poet estre heyr et par consequence tollur si en tiel eas deiue son age attendre.

Herel. Et nous demaundoms iugement del hure qe vous ne poez dedire qe nous ne sumes frer mes vous ditez noun pas del entier saunk et ditez vous estre [*sic*] del entier saunk ¹nous demaundoms iugement² del hure qe la prochynte du saunk couient estre trie en ceo qe ceo plee prengue effecte al iugement si deuaunt nostre age deuoms estre partie a ceste prochynte trier.

Denom. Et nous demaundoms iugement si le altre qe le heyr Thomas benefico de attendre age puyssse prendre vous nestes mie le heyr Thomas qar vous estes del autre uentre et nous del entier saunk et par taunt estes vous nostre tollur par qay ne deuez vostre age attendre.

Berr. Si vous ne luy eussez fet tollur il eust attendu son age et si eust attendu son age apeyn eussez vous iames atteynt vostre purpose ore estes a nos iugements en eas de ley.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 369, Staffordshire.

Ricardus de Calewyche et Margareta vxor eius per attornatum suum petunt uersus Iohannem filium Thome de Ferariis de Lockesleye medietatem manerii de Magna Lockesleye cum pertinenciis De qua Thomas filius Thome de Ferariis de Lockesleye consanguineus predictæ Margarete cuius heres ipsa est fuit sesitus in dominico suo ut de feodo die quo obiit etc. Et unde dicit quod predictus Thomas filius Thome fuit seiscitus de predicta medietate cum

¹⁻² This seems a superfluous repetition.

BEREFORD C.J. If you were in a case where you were alleging bastardy and the bastard were in seisin and said that he was in seisin as son and heir you would have to say either that he was a bastard or that he was born before etc. So here. You say that the defendant is a tollor. Tell us how, whether as a stranger or as a bastard, or as born of another *ventre*, or how else ; for your pleading is forceless unless you say how he is a tollor, instead of for ever harking back to what you counted. Therefore plead.

Denham. Sir, we tell you that that Thomas, our brother, took to wife Elizabeth, of whom he gendered the Thomas of whose seisin we have counted, and he had none other offspring by her, neither son nor daughter. Elizabeth died and Thomas took another wife, Cecily, of whom he gendered John, to whom estate of inheritance cannot descend because he is of another *ventre* ; and since he cannot be heir, and must, in consequence, be a tollor, we ask judgment whether in such circumstances he is entitled to await his age.

Herle. And since you cannot deny that we are brother, but say that we are not of the whole blood, and say that you are of the whole ; and since, therefore, the question of proximity must be tried, for it is that upon which the judgment will turn, we ask judgment whether we ought to be party, before our full age, to trying that proximity.

Denham. And we ask judgment whether other than the heir of Thomas can have the advantage of awaiting his age. You are not the heir of Thomas, for you are of another *ventre*, while we are of the whole blood ; and thereby you are our tollor, and therefore you are not entitled to await your age.

BEREFORD C.J. If you had not alleged that the defendant was a tollor, he would have awaited his age ; and if he had awaited his age it is very unlikely that you would ever have attained your end. Now you are at our judgment on a point of law.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 369. Staffordshire.

Richard of Calwick and Margaret, his wife, by their attorney claim against John, son of Thomas of Ferrers of Loxley, the moiety of the manor of Great Loxley with the appurtenances, of which Thomas, son of Thomas of Ferrers of Loxley, cousin of the aforesaid Margaret, whose heir she, Margaret, is, was seised in his demesne as of fee on the day on which he died etc. And thereof he¹ saith that the aforesaid Thomas, son of Thomas, was seised of the aforesaid moiety with the appurtenances in his demesne as of fee in time

¹ i.e. the attorney.

Note from the Record—continued.

pertinenciis in dominico suo vt de feodo tempore pacis tempore Edwardi Regis patris domini Regis nunc capiendo inde explecias ad valenciam etc. Et inde obiit seiscitus etc. Et de ipso Thoma quia obiit sine herede de se resorciebatur feodum etc. isti Margarete vt amite et heredi sorori cuiusdam Thome patris predicti Thome de cuius seiscina etc. Et inde producit sectam etc.

Et Iohannes venit Et bene concedit quod ille Idem Thomas de Ferariis de cuius seiscina predicti Ricardus et Margareta petunt obiit seiscitus de predicta medietate manerii etc. in dominico suo vt de feodo post cuius mortem Idem Iohannes intrauit in eisdem et est inde in seiscina vt frater et heres et infra etatem Et petit quod loquela ista remaneat vsque ad etatem etc. Et Ricardus et Margareta dicunt quod per minorem etatem ipsius Iohannis loquela ista retardari non debet Dicunt enim quod ad hoc quod loquela ista in casu isto remanere deberet per minorem etatem predicti Iohannis necessario requiretur quod Idem Iohannes fuisset frater ipsius Thome de integro sanguine videlicet de eodem patre et eadem matre Et dicunt quod predictus Thomas pater ipsius Thome de cuius seiscina etc. habuit duas vxores scilicet quasdam Elizabetham vxorem primam de qua procreauit eundem Thomam de cuius seiscina etc. et Ceciliam secundam de qua exiuit predictus Iohannes qui nunc tenet Et ex quo predictus Thomas pater etc. nullum habuit exitum de predicta Elizabetha nisi ipsum Thomam de cuius seiscina etc. consanguineum ipsius Margarete sororis predicti Thome patris etc. cui secundum legem et consuetudinem regni competit accio petendi etc. de seiscina predicti Thome consanguinei sui per resortum etc. in forma predicta et non alteri petunt Iudicium si loquela predicta per allegacionem ipsius Iohannis qui non est de integro sanguine etc. Immo verius ablator etc. cuius seiscina pocius dici debet intrusio quam vera possessio expectare debeat etc.

Et Iohannes dicit quod ex quo predictus Thomas pater suus fuit seiscitus de predicta medietate et inde obiit seiscitus in dominico suo vt de feodo post cuius mortem predictus Thomas filius et heres ipsius Thome patris etc. et frater istius Iohannis antenatus intrauit et inde obiit seiscitus etc. post cuius mortem iste Iohannes inde est in seiscina vt frater et heres et infra etatem vt predictum est petit Iudicium si per aliquam allegacionem ipsorum Ricardi et Margarete ad quam Idem Iohannes dum infra etatem existit pars esse non potest loquela ista remanere non debeat vsque ad etatem etc. Et super hoc datus est eis dies de audiendo Iudicio suo hic in octabis Purificacionis beate Marie etc.

Note from the Record—*continued.*

of peace in the time of King Edward, father of the lord King that now is, taking esplees thence to the value etc. And thereof he died seised etc. And from that Thomas, because he died without heir of his body, the fee etc. resorted to this Margaret as aunt and heir, being sister of a certain Thomas that was father of the aforesaid Thomas of whose seisin etc. And thereof he produceth suit etc.

And John cometh and he doth fully admit that that same Thomas of Ferrers of whose seisin the aforesaid Richard and Margaret claim died seised of the aforesaid moiety of the manor etc. in his demesne as of fee, after whose death the same John entered upon them and is in seisin thereof as brother and heir and is within age, and he asketh that this action remain over until his full age etc. And Richard and Margaret say that that action ought not to be delayed by reason of the infancy of the said John; for they say that if this action ought in these circumstances to stand over by reason of the infancy of the aforesaid John it is a necessary condition that the same John be a brother of the said Thomas of the whole blood, to wit, of the same father and the same mother; and they say that the aforesaid Thomas, father of that Thomas of whose seisin etc., had two wives, namely, a certain Elizabeth, his first wife, of whom he gendered the same Thomas of whose seisin etc., and a certain Cecily, his second wife, of whom issued the aforesaid John who is now tenant; and because the aforesaid Thomas, father etc., had no issue by the aforesaid Elizabeth save that Thomas of whose seisin etc., cousin¹ of this Margaret, sister of the aforesaid Thomas who was father etc., to which Margaret, by the law and custom of the kingdom, a right of action accrueth by resort etc. to claim etc. of the seisin of the aforesaid Thomas, her cousin, in the form aforesaid, and to none other, they ask judgment whether the aforesaid action ought to stand over by reason of the allegation of the said John who is not of the whole blood etc., but in truth a tollor etc., whose seisin ought rather to be called an intrusion than a true possession.

And John saith that because the aforesaid Thomas, his father, was seised of the aforesaid moiety and died seised thereof in his demesne as of fee, after whose death the aforesaid Thomas, son and heir of the said Thomas, father etc., and elder born brother of this John, entered and died seised thereof, after whose death this John is in seisin thereof as brother and heir and is within age as is aforesaid, he asketh judgment whether by reason of any allegation of the said Richard and Margaret to which the same John cannot be party while he remaineth within age this action ought not to stand over until his full age. And thereupon a day is given them to hear their judgment here in the octaves of the Purification of Blessed Mary etc.

¹ For this use of the word 'cousin' see note 1, p. 157 above.

23. THE KING v. THE BISHOP OF NORWICH.¹I.²

Le Roy porta soun quare non admisit vers le Eueske de Northwyche.

Herle. Nous vous dioms qe la Eglise se voyda par la mort William de Bedhenham presentee par William de Boueville le quel William presenta vn clerk Ion de Camcefelde le quel Ion sewyt lettre denqueste solom lay de seinte Eglise par quele enqueste fut appris qe William de Boueuyl fut verrey patron le presente ne sewit pas sa institution en due maner par qe le tens de .xvj. moys passa et il com ordener ordeyna de mesme la Eglise pur la cure dez almes solom le dreit et priuelege de seinte Eglise par la ley del realme ou vn an apres le tens passe nostre seigneur le Roy ly maunda son bref qe cy est et myst le bref a la court qe voleit qe le Roy auoyt recouery le presentement vers William de Boyuyle par le garrante [*sic*] mesme cesti William par qe contresteaunt le cleyme mesme cesti William a presenter nostre seigneur le Roy couenable persone receyuera a la eglise auant dit et depus qe le bref nostre seigneur le Roy testimoigne qil recouerast le presentement par le graunt mesme cely William de presenter adonqe fut defet par le tens passe et autre estat ne pout accrestre au Roy par le graunt William qil mesme nauoit al tens del graunt par [qe] fut auys al eueske qe le presente le Roy ne fut pas receyuable encountre la fraunchise de seinte eglise en ceo cas et entendoms pas qe nostre seigneur le Roy en ceo fet put assigner desobeyssaunce en nous.

Scrop. Quant le Roy fut ascerte qe la eglise fut voyde il presenta vn soun clerk Ion de Wodeforde deynz le tens le quel Ion porta bref de presentement le Roy al Euesqe par quel presentement le Euesqe fut ascerte del bref le Roy ou le Roy sewyt le quare Impedit pur son dreit trier et depus qe le Eueske ne put dedire qe le presente le Roy vynt etc. et il ad conue qil ordeyna ala Eglise etc. pendaunt le

¹ Reported by *C*, *D*, *H*, and *Z*. Names of the parties from the Plea Roll.

² Text of (I) from *C*.

28. THE KING v. THE BISHOP OF NORWICH.¹

I.

The King brought his writ of *quare non admisit* against the Bishop of Norwich.

Herle. We tell you that the church was void by the death of William of Badingham, the presentee of William of Bovill, which William [of Bovill then] presented a clerk, John of Catfield, and this John sued out a letter of inquest according to the law of Holy Church, by which inquest it was found that William of Bovill was the true patron. The presentee did not procure his institution in due manner, and consequently the period of six months elapsed²; and the Bishop, as Ordinary, made provision in respect of the same church for the cure of souls according to the right and privilege of Holy Church by the law of the realm; and a year after the time had elapsed our lord the King sent him his writ which is here—and he tendered the writ to the Court which said that the King had recovered the presentation against William of Bovill by virtue of the grant of that same William, and therefore, notwithstanding the claim of that same William to present, [the Bishop] should receive to the aforesaid church a fit person upon the presentation of our lord the King³—and since the writ of our lord the King witnesseth that he had recovered the presentation by virtue of the grant of that same William of the presentation, and [since that right to present] was then annulled by the lapse of the time [of six months] and no estate could accrue to the King by the grant of William other than that which William had at the time of the grant, the Bishop was therefore of opinion that the presentee of the King was not receivable contrary to the privilege of Holy Church in such case; and we do not think that our lord the King can, in these circumstances, impute disobedience to us.

Scrope. When the King was certified that the church was void he presented his clerk, one John of Woodford, within the time [limited], which John brought letters of presentation from the King to the Bishop, of which presentation the Bishop was certified by the King's letters. The King then sued his *quare impedit* to try his right; and since the Bishop cannot deny that the King's presentee came etc., and since he hath admitted that he provided for the church etc., while the King's

¹ See the Introduction, p. xlv. above.

² A patron's presentee must be instituted within six months of the benefice falling vacant, otherwise the appointment falls to the Bishop *per*

lapsum temporis.

³ The scribe has apparently omitted some words from his text, but the meaning is clear.

plee le Roy ou nul ordener ne peut ceo fere en le dreit le Roy et qe le presente le Roy refusa demaundoms iugement et prioms institucion et damages pur le Roy.

Herle. Par lenqueste fut le Eueske appris qe le dreit del presentement fut a William de Boyuyl et le bref ne proue mye qe le Roy recouery le presentement de soun dreit eynz del graunt William et issint par lenqueste et le bref est le dreit William afferme et demaundoms iugement si vons en le dreit le Roy qe nest proue ne trie poez dire qe a mesme la eglise auoms ordeyne etc.

Scrop. Quel respouns qe le defendant doune en le quare Impedit le pleyntif nauera mye bref al eueske si il ne fait demoustraunce etc. et ceo est pur ceo qe le iugement qe se tailla sur le respouns le defendant refert a la demoustraunce le pleyntiff et la detrie auxi de ceste part de pus qe le Roy fit sa demoustraunce com del dreit de sa corone ou William de Boyuyle graunta le presentement au Roy si semble qe ceo graunt refert a la demoustraunce et solom cele demoustraunce le dreit le Roy assez trie etc.

Will. ad idem. Quant le Roy porta soun bref il fut prest a trier soun dreit et quant qil poayt et se fit title de dreit de sa corone et lautre le graunta le presentement le quel graunt deit plus naturelement referir al title et affermer qe a doner au Roy nouel title de presenter com en cas si en bref de dower ou en autre bref ou homme face demoustraunce et le tenant rent a ly ley entent qil rent solom sa demoustraunce et ne le fet mye nouel title ne autre qil auant nauoit auxi par de ca.

Toud. Nest pas meruaille qe rendre est plus haut en ley qe nest graunt.

Scrop Iustice a Fr. Si le presente William eust este institut deuant qe le bref le Roy eust venuz al eueske poayt il auer oste le clerk qe est institut en le dreit William de Boyuyle par cel recoueryr a qei il ne fut resceu.

Scrop. Pendaunt le quare Impedit entre .ij. hommes le eueske encumbrast la eglise deuant le tens cely qe auoit recouery le presentement defreit desacombrer mes qe le tens fut passe al tens del recoueryr pur ceo qe il auoit soun tens de multo plus haut en ceo cas deus qe le

plea was hanging, a thing that no Ordinary can do where the King's right is concerned, and that he rejected the King's presentee, we ask judgment, and we pray institution and damages for the King.

Herle. The Bishop was certified by the inquest that the right to present belonged to William of Bovill, and the writ doth not show that the King recovered the right to present of his own right, but in virtue of the grant by William; and, since the right of William is affirmed both by the inquest and by the writ, we ask judgment whether you can say that we have provided for the same church in contravention of the right of the King, a right which hath neither been proved nor tried.

Scrope. Whatever answer a defendant in a *quare impedit* maketh, the plaintiff will never get a writ to the Bishop unless he make demonstration etc., and the reason of that is that the judgment which is given upon the defendant's answer hath reference to the plaintiff's demonstration and trieth it. So here. Since the King in his demonstration claimed as of the right of his crown in the case where William of Bovill granted the presentation to the King, it seemeth that this grant is relevant to the demonstration, and that the right of the King was sufficiently tried in accordance with that demonstration.

Willoughby ad idem. When the King brought his writ he was ready to try his right and in whatever way he could; and he laid his title as of the right of his crown, and the other [*i.e.* William of Bovill] granted him the presentation, which grant should rather be taken in affirmation of the title [as laid] than as giving the King a new title to present; just as when in a writ of dower, or in any other writ, the claimant maketh his demonstration and the tenant surrendereth to him, the law understandeth that the tenant surrendereth in accordance with the claimant's demonstration, and doth not suppose that it is by reason of some new title in the claimant nor of any other than that which he had before. So here.

Toudeby. There is naught strange in that, for the law reckoneth a surrender higher than a grant.

SCROPE J. to Friskeny. If William's presentee had been instituted before the King's writ reached the Bishop, could the King have ousted the clerk who had been instituted of the right of William of Bovill by this recovery to which William is not a party?

Scrope. If, during the pendency of a writ of *quare impedit* between two claimants, the Bishop should fill the church before the time [of six months had elapsed], he that recovered the right to present would annul the appointment, although, at the time when the recovery was gotten, the time had elapsed, because he had a right to his time. Much

Eueske fut appris qe le Roy myst debat en cel presentement auant le recouerir le Roy la eglise encombra et issy occupa soun tens et nul autre bref git pur le Roy a desacombrer la eglise si noun cesti bref si semble il qil deit mesme la eglise desacombrer et le presente le Roy receyuire le quel presente il ad refuse en desheritaunce le Roy et demaundoms iugement.

Denom. De pire condicioun ne deit le Roy estre en ceo cas qe ne serreit vn estraunge mez si vn estraunge eust recouery vn presentement en ceo cas il recouerait damages mes le presentement est done au Roy en lu dez damages par qei il semble qil deit receyuire soun presente le quel il ad refuse et prioms institucioun et damages pur le Roy.

Stonor. En tant com le presente le Roy ly vint il fut appris qe la eglise fut litigious apres quel tens il poeit nul presente auer resceu a quel eglise il ordeyna le droit le Roy nent trie com il ad conue par qei il seuble qe il ne se put escuser de desobeyssanz fet au Roy.

Scrop. Donez regard az paroles de iugement qe volent quod dominus Rex recuperet presentacionem suam issi ad cel suam relacioun al droit le Roy et nent al droit William.

Herle. Vous proue[z] tropoy qe le iugement fut quod recuperet presentacionem suam hac vice et issi le recouerer condiciounel ou la demoustraunce le Roy fut certeyn par qei vous ne poez dire qe cel recouerer afferme le droit le Roy eynz le droit William.

Stonor. Il couent qe le droit le Roy seit afferme par cel recouerir ou le droit William mes le droit William ne mye pur ceo qil ne recouery pas le presentement donqe le droit le Roy pur qi iugement se fit qil eut bref al eueske qil receust soun presente le quel le quel [*sic*] en desobeyssance le Roy il ad refuse et demaundoms iugement etc.

Et sunt adiournez a la .xv.^{aa} de saint Hillarie.

more so in this case; and since the Bishop was certified that the King was contesting this presentation and filled the church before the King's recovery, and so encroached upon the King's time, and since no other writ lieth for the King by which he can disencumber the church save this writ, it seemeth that the Bishop himself ought to disencumber the church and receive the King's presentee, which presentee he hath refused to the disinheritanee of the King; and we ask judgment.

Denham. The King ought to be in no worse condition than that in which a stranger¹ would be in like circumstances; now if a stranger had recovered a presentation, he would, in these circumstances, recover damages, but the presentation is given to the King instead of damages; and therefore it seemeth that the Bishop ought to receive his presentee, whom he hath refused; and we pray institution and damages for the King.

Stonor. Inasmuch as the King's presentee came to the Bishop, the Bishop was aware that the [right of presentation to the] church was contested; after which time he was not entitled to receive any presentee; yet, while the right of the King was still undetermined, as he hath admitted, he made an appointment to that church, and therefore it seemeth that he cannot excuse himself of disobedience done to the King.

Scrope. Observe the words of the judgment which are that the lord King is to recover his right to present; that word 'his' referreth to the King's right, and not to William's right.

Herle. You prove too little, for the judgment was that he recover his right to present *hac vice*, and so the recovery was limited while the King's demonstrance was general; and therefore you cannot say that this recovery affirmeth the King's right, for [it affirmeth] William's right.

Stonor. Either the King's right or William's right must be affirmed by this recovery; but William's right cannot be, for he did not recover the right to present. It is the right of the King, then, [that is affirmed] for whom judgment was given that he should have a writ to the Bishop directing him to receive the King's presentee, whom, in disobedience to the King, he hath refused; and we ask judgment etc.

And they were adjourned to the quindene of St. Hilary.

¹ I do not see the force of this word. Probably it should be 'subject.'

II.¹

Quare non admisit ou leusque dit qil presenta per lapsum temporis.

Le Roi porte le quare non admisit uers leuesqe de Northwych pur I. de Catefeld² qe fut presente par le Roi qe com nostre seigneur le Roi recouerit vers William de Bouyle lauson del eglise de Badyngham per bref de quare impedit a la quinzeime de la Trinite dreyn passe et presenta vn soun clerk I. de Catefeld et auet [bref] al Euesqe qe luy ressut etc. al presentement le Roi non obstante etc. quel bref lauaunt dit I. ly liuera tiel iour tel leu en presenee etc. le dit Euesqe le presenta [sic] le Roi resseivre ne voleit mes luy refusa en despit le Roi et de son maundement et a damages etc.

Clauer. Mestre I. de Basyngham [sic] fut persone de la eglise auaundit de presentement W. Bouyle par qi mort la eglise se voida ore par qei mesme cesti W. Bouyle presenta mesme cesti I. de Catefeld qore suit etc. pur se solom vsage de seynt eglise si la eglise fut voyde et si W. Bouyle fut verrei patron etc. ou il troua qe W. fut etc., mes mesme cesti I. ne suyt pas de auer sa institucioun etc. deqes apres les vj. meys passez par qei leuesqe per lapsum temporis puruent pur eue des almes etc. et ly dona la eglise solom fraunchise de seynt eglise pus apres vn an et plus mesme cesti I. porta bref aleuesqe le quel voleit qe W. de Bouyle graunta le presentement hac vice al Roi et depus qe leuesqe fut certefie par enqueste qe W. fut verrei patron et qe la eglise fut voida outre le temps estre eco le bref veot qe le Roi auoit de graunt W. le presentement apres qil auoit puruou al eglise vt supra en le dreit W. nentendoms pas qil ad rien trespasse vers le Roi.

Scrop. Bien est verite qe vn Iohan morust persone enpersonee apres qi mort nostre seigneur le Roi presenta vn soun clerk I. de Wodeff

¹ Text of (II) from *D*.

² See note¹ on the opposite page.

II.

Quare non admisit, where the Bishop said that he had presented *per lapsum temporis*.

The King brought the *quare non admisit* against the Bishop of Norwich on behalf of John of Woodford¹ who was presented by the King, [setting out] how when our lord the King recovered against William of Bovill the advowson of the church of Badingham by a writ of *quare impedit* on the quindene of the Trinity last past, and presented one John of Woodford, his clerk, and had a writ to the Bishop that he should receive him etc. upon the presentation of the King, notwithstanding etc., which writ the aforesaid John delivered to the Bishop on such a day in such a place, in the presence of etc., the said Bishop would not receive the presentee of the King, but refused him in contempt of the King and his command and to his damage etc.

Claver. Master John of Badingham was parson of the aforesaid church on the presentation of William Bovill, and it is by his death that the church is now void, and therefore that same William Bovill presented this same John of Catfield who at once sued out etc. for himself [a writ to have an inquest] according to the custom of Holy Church [to inquire] whether the church was void and whether William of Bovill was the true patron etc., by which inquest it was found that William was etc. But that same John took no steps to procure his institution etc. Then, after the six months had passed, and the Bishop had consequently provided, by lapse of time, for the cure of souls etc., and given the church according to the franchise of Holy Church, a year and more afterwards that same John [of Woodford] brought a writ to the Bishop setting out that William of Bovill had granted the presentation for this turn to the King. Since, then, the Bishop was certified by inquest that William was the true patron and that the church was void beyond the time, and, further, since the writ said that the King got the presentation by William's grant after that the Bishop had provided for the church *ut supra* [at a time when it was still] of the right of William, we do not think that he hath in aught trespassed against the King.

Scrope. It is quite true that John died parson imparsoned. After his death our lord the King presented his clerk, one John of Woodford,

¹ See the text. In this and the following version and in the Plea Roll there is a careless confusion of the names of the King's presentee and W. Bovill's.

In translating I have made the necessary corrections. See the Introduction, p. xlviii above.

com en son dreit demeyne et pur ceo qil troua W. de B. desturbour il porta son quare impedit vers eesti W. deynz les iij. semaynes apres la mort la persone et dit a quel iour la persone morust et a quel iour il porta son bref et demaundoms iugement desicom nostre seigneur le Roi porta son bref auaunt le temps passe et par meyme cel bref recouerist son presentement et nul temps ne court al Roi et vous auez conu que vous purueustes etc. et refusastes le presente le Roi et demaundoms iugement et prioms qil resseyne le presente etc. et prioms noz damages.

Herle. Si le Roi vst recouery com en son dreit demeyne vous deisez bien que nul temps court vers le Roi mes ore nauoit il rien forsque del graunt W. par qei depus que lenqueste etc. que puruent al eglise per lapsum temporis etc. par la fraunchise de seynt eglise en le dreit W. de B. auaunt ceo que W. graunta au Roi iugement etc.

Toud. Vostre bref demeyne que vous portes al evesque et le iugement que vous alleggez proue que le Roi na ioyit nul dreit si noun del graunt W. par qei etc.

Denom. Il y ad chose qest cause de iugement et chose qest eyde de iugement que la cause de iugement est le bref original et le plee sur le bref que la court ne responereit¹ [*sic*] nul conisaunce saunz bref en eyde de iugement est le graunt ou le rendre mes ore dioms nous que nous portames le quare impedit uers W. de B. et dioms qal Roi apent a presenter par la resoun que W. de B. tynt du Roi iij. acres de terre ensemblables ou lauoeson del eglise de Badyngham et aliena a H. de Catefeld et Ion son frere a terme de lour .ij. vies saunz conge le [Roi] par qei dreit acrust al Roi ou W. de B. graunta etc. par qai graunt ad relacion al dreit le Roi.

Serope. Quant parties vynent en court par le quare impedit seit il a [*sic*] Roi seit il a autre homme il ne serra pas resceu de graunter ne conustre saunz ceo qil eit fet demoustrance auaunt par counte par qei le graunt W. de B. ad relacion al ademoustrance [*sic*] et al bref.

Ston. Ieo vous di pur lay que qant le Roi porte son bref del temps etc. que leuesque ne put iames presenter si la que le plee seit disons² et ceo est pur ceo que le Roi ne put iames recouerer en cel eas damages et

¹ Probably a slip for *receuerit*.

² Probably a mistake for *discus*.

as of his own right : and because he found that William of Bovill was disturbing him, he brought his *quare impedit* against this William within three weeks after the death of the parson—and he said on what day the parson died and on what day the King brought his writ—and we ask judgment, since our lord the King brought his writ before the time had elapsed, and by that same writ recovered his presentation, and no time runneth against the King, and you have admitted that you provided etc. and refused the King's presentee. And we ask judgment and we pray that the Bishop receive the presentee etc., and we pray our damages.

Herle. If the King had recovered of his own right you would be right in saying that time doth not run against the King ; but here the King had naught save by the grant of William ; wherefore, since the inquest etc. and [the Bishop] provided for the church *per lapsum temporis* etc., in accordance with the privilege of Holy Church, in the right of William before William granted to the King, [we ask] judgment.

Toudeby. Your own writ which you bring against the Bishop and the judgment which you allege prove that the King enjoyed no right save what he had by the grant of William ; wherefore judgment etc.

Denham. There is matter which is the cause of judgment and matter which helpeth judgment. The cause of the judgment is the writ original, and the plea upon the writ, for the Court would not receive¹ any admission without a writ. The matter which helpeth judgment is a grant or surrender. But now we tell you that we brought the *quare impedit* against William of Bovill, and we say that it appertaineth to the King to present because William of Bovill held of the King four acres of land together with the advowson of the church of Badingham, and alienated to H. of Catfield and John, his brother, for the term of their two lives without leave of the King ; wherefore right accrued to the King when William of Bovill granted etc. ; wherefore the grant hath relation to the right of the King.

Scrope. When one cometh into Court by the *quare impedit*, whether it be the King or other, he shall not be allowed to grant or acknowledge unless he have first made a demonstrance by his count ; and therefore the grant of William of Bovill hath relation to the demonstrance and to the writ.

Stonor. I tell you for law that when the King bringeth his writ of the time etc. the Bishop can never present while the plea is being argued, and the reason for that is that in that case the King could never recover his damages because time doth not run against the

¹ But see the text.

ideo non currit ei tempus mes tut dys recouera sa demaunde et depus qe le Roi dedeynz le temps etc. et le presente porte bref aleuesqe de presentement et a cel le euesqe suyt qe le Roi institebat [sic] il ne se poit del tort excuser et demaundoms iugement.

Denom. Homme de poeple ne serra de meillour condicioun qe ne serra le Roi mes la ou homme de poeple recorde [sic] son presentement et leuesqe presente per lapsum temporis il recouera damages et pur ceo qe nul temps ne passe al Roi ne recouera pas damages dount il ne put ren auer forqe le presentement et depus qil ad conuz qe le Roi eut debat il ne se put del tort escuser iugement.

Scrop. La ou le plee pente entre autres persones de quare impedit et leuesqe presente al esglise etc. et ocupe son temps demz les vj. mees lautre recouere [sic] apres les vj. mees il vsera bien son quare ineumbrauit uers leuesqe a ly fere desacumbre sa eglise qil ad encombre auant le tens etc. et issy en cas la ou le Roi met debat vers qi nul tens ne passe si leuesqe le donne et le Roi presente et il ne voleit le presente le Roi receyuere le portera le quare non admisit.

Herle. Nous auoms apris apres lenqueste prise en court christiene par qel etc. qe W. de B. fut dreiturel patron et auoit presente I. de Catefeld qe ne suyst pas son presentement etc. par qei nous le donames com en le droit W. de B. apres le temps passe le tittle le Roi par q[e]y il cleyme le presentement qe est par le graunt W. de B. solom ceo qe le bref veot et le recorde ou W. mesme ne put auer accion vers leuesqe de cel presentement etc. et per consequens ne le Roi qe cleyme com del droit W. de B. et ceo testmoigne le bref iugement etc. qe nous auoms bien veu qe la ou il auoit debat entre le Roi et lay patron pus ad graunte le presentement al Roi qe le ordener presente per lapsum temporis etc. le Roi porta le quare non admisit etc. et il ne prist ren et la cause fut pur ceo qil clama en autri droit et noun pas en son demeyne auxi par de sa.

Ston. Qant W. de B. voleit auer presente et le Roi myst debat

King, for at any time he will recover his demand. And since the King, within the time etc., and the presentee delivered his letter of presentation to the Bishop,¹ and by that the Bishop knew that the King had presented him for institution,² and so cannot excuse himself of wrongdoing, and we ask judgment.

Denham. A man of the people ought not to be in a better condition than that in which the King is; but when a man of the people recovereth his presentation, and the Bishop presenteth by lapse of time, he will recover damages; but, because time runneth not against the King, he will not recover damages. He can, therefore, have naught save the presentation; and since the Bishop knew that the King was taking action, he cannot excuse himself of wrongdoing. Judgment.

Scrope. When a plea of *quare impedit* is hanging between persons of equal³ status, and the Bishop presenteth to the church etc. and encroacheth upon the time of six months, and the party recover after the lapse of the six months, he will have his writ of *quare incumbrauit* against the Bishop to make him disencumber his church which he had encumbered before the time etc.; and so in the case where the King, against whom time runneth not, taketh action, if the Bishop give [the Church] and the King present and the Bishop will not receive the King's presentee, the King will have the writ of *quare non admisit*.

Herle. We were certified after the inquest taken in Court Christian, by which etc., that William of Bovill was the rightful patron and that he had presented John of Catfield, who did not prosecute his presentation etc., and we, consequently, gave [the church] as of the right of William of Bovill after the lapse of the time. Since the title by which the King claimeth the presentation is founded upon the grant by William of Bovill, according to the tenor of the writ and the record, and since that same William could have had no right of action against the Bishop in respect of that presentation etc., it followeth that the King, who is claiming as of the right of William of Bovill, cannot have one; and the writ showeth as much. Judgment etc., for we have seen cases where there hath been dispute between the King and the lay patron, [and the lay patron] hath afterwards granted the presentation to the King, and the Ordinary hath presented by lapse of time etc., and the King hath brought the *quare non admisit* etc., but hath taken naught; and the reason was that he was claiming of another's right, and not of his own. So here.

Stonor. When William of Bovill wished to present and the King

¹ The translation here is conjectural. The text is too corrupt for emendation.

² The *autres* of the text is probably a mistake for *owles*.

la eglise demurra litigiouse taunt qe le fut discus etc. et le debat fuit mys deinz les vj. mees et continue cel proces taunqe le Roi recouery etc. uers W. et nul temps ne court etc. et vous auez conu la esglise estre pleyne de vostre colacioun demene etc. Daltrepart en chescun cas ou parties pledent en court Iugement se taille sur lour recoun [sic], sil ne se mettent en enqueste qe couent qil diount pur lune partye mes en cas ou nous sumes ore pur ceo qe W. ne put pas contrepleder le Roi en sou dreit il ly couendreit graunter sa demoustraunce et issint recouera il cel presentement com son dreit solom la demoustraunce et noun pas solom la conusaunce W. par qei etc.

Herle. Le bref le Roi testmoigne qe ceo fut le dreit W. qe le bref etc. et ¹ dit qil graunta le presentement al Roi hac vice en supposaut ceo estre sur vn dreit taille a nostre seignur le Roi par le graunt W. par qei etc.

Berr. Quantq vous dites nest si noun auer le quel le recouer si fit en le dreit le Roi ou en le dreit W. et si nul temps en court al Roi.

Scrop. Le iugement fuit qe le Roi recouery presentacionem suam et noun pas presentacionem Willelmi de B.

Dies datus est in quindena sancti Hillarii etc.

III.²

Le roy porta vn quare non admisit uers le eusqe de Nordwiche et counta tiel counte.

Migg. Ceo vous moustre nostre seygnour le roy par Iohan de Ho qy cy est qy suyt pur luy qe com il recoueri auoit le presentement a la eglise de Watingham a la quinzeyne de la trinite lan seym par vn quare impedit vers William de Bouile et auoit bref hors de eyenz qe nient countresteaunt le recheyme William de Bouile qe il resecut couenable clerk qe le roy presenteroit quel bref Iohan de Ho liuca al euesqe le iouedi procheyn deuaunt la feste de la translacioun de seynt Thomas a Paren [sic] en la presence robert etc. et luy presenta le clerk et le presente le roy Iohan de Bedford couenable clerk il resecyuere ne luy

¹ Here a blank space follows in the MS.

² Text of (III) from *H.*

took objection, the church remained litigious until the question was argued etc., and the King raised his objection within the six months, and process therein was continued until the King recovered etc. against William, and no time runneth etc.; and you have admitted that the church was filled by your collation etc. Further, in every case where parties plead in Court the judgment is rendered on the count, if they do not go to an inquest, for the Court must needs give judgment for the one party [that hath made a claim on which the other hath not gone to an inquest¹]; but, in the circumstances in which we now are, because William cannot counterplead the King as to his right, he must admit his demonstrance, and so the King will recover this presentation as of his own right, in accordance with his demonstrance, and not according to the recognition [of the grant of the presentation] by William; wherefore etc.

Herle. The King's writ witnesseth that this was William's right; for the writ etc. and . . .² said that he granted the presentation to the King for this turn, supposing that the right was vested in our lord the King by the grant of William; wherefore etc.

BEREFORD C.J. All you say amounteth to naught more than an argument as to whether the recovery was had of the King's right or of William's right, and whether [in the circumstances] time runneth against the King.

Scrope. The judgment was that the King recovered his presentation and not that he recovered the presentation of William of Bovill.

A day is given them on the quindene of St. Hilary etc.

III.

The King brought a *quare non admisit* against the Bishop of Norwich and counted as followeth:

Miggeley. This sheweth you our lord the King by John of Hoo, who is here, who sueth for him, that whereas he had recovered the presentation to the church of Badingham on the quindene of the Trinity in the seventh year by a writ of *quare impedit* against William of Bovill, and had a writ from this Court ordering the Bishop, notwithstanding the claim of William of Bovill, to receive a fit clerk which the King presented, which writ John of Hoo delivered to the Bishop at Melford³ on the Thursday next before the Feast of the Translation of St. Thomas in the presence of Robert etc., and he presented to him the clerk that was the presentee of the King, John of

¹ Here again the translation is only conjectural.

² See the text.

³ Corrected from the Record.

uolait eynz le dedit en despit du maundement nostre seynour le roy et a ses damages de ij.C.li. si le euesqe le voet dedire prest est auerer pur le roy.

Clauer defendit et dit qe vn Iohan de Watingham tynt la eglise de Watingham com persone enpersone par qay [mort] William de bouil presenta son clerik Iohan de Cattefeld qy suyt lettre denqueste ou trone fut qe William de bouil fut dreyt patron et autres articles qe apurtenoient al enqueste les sis moys passez Iohan de Cattfeld suit mie institucioun issi qe apres le tens qe done est a lay patron a presenter pur ceo qe la eglise fut voide et nient pleyn par le presentement le lay patron il dona sulom les layes de saynt eglise auxi com appende a ordiner et le bref le roy luy vint vn an apres.

Scrop. Apres ceo qe la eglise sei voida par sa mort etc. plus tost qe la notice luy vint le roy presenta son clerik Iohan de bedefort issi qe destourbaunce il fut mis par William de bouil par qay le roy porta le quare inapedit et recouert et issi le roy presenta deynz le tens et quant il troua destourbaunce porta son bref et ad continue issi la bosoygne taunke la fine et pur ceo qe nul tens court al roy il auoit bref al euesqe de receiuer son presente ou il le refusa et demaundoms iugement si de cest mesprisioun sei puyssse excuser.

Herel. Le roy auoit bref dount le euesqe fut apriis qe il auoit le presentement quant a ore du graunt William de bouil quele chose suppose qe deuaunt le graunt William William auoit dreyt de presenter par la resoun qe par son graunt le roy auoit dreyt de presenter le quel William le tens qe done luy fut ne plenit mie la eglise sulom le dreyt de presentement qe a luy fut conu le euesqe fut apriis par bref et par enqueste par quay le euesqe purueit com ordiner et demaundoms iugement si nul tort poez en le euesqe atacher.

Scrop. Si plee seit mue entre owels persones et le plee seit discusse deynz les sis moys et pendaunt le plee leuesqe encombre la eglise il desencombra la eglise voet il ou noun ore si le roy recouere son presentement pur ceo qe nul tens court al roy le euesqe ne poet plus en ceo cas

Catfield,¹ a fit clerk, yet the Bishop would not receive him, but refused him, in contempt of the commandment of our lord the King, and to his damage of two hundred pounds. If the Bishop desire to deny it, he [*sc.* John of Hoo] is ready to aver it on behalf of the King.

Claver defended and said that one John of Badingham¹ held the church of Badingham¹ as parson imparsoned, upon whose death William of Bovill presented his clerk, John of Catfield, who sued a writ to have an inquest, by which [inquest] it was found that William of Bovill was the rightful patron, and the other articles appurtenant to the inquest [were also found]. The six months elapsed without John of Catfield procuring institution, so that after the lapse of the time which is given to a lay patron within which to present, the Bishop, because the church was void and was not filled by the presentation of the lay patron, bestowed it according to the laws of Holy Church, as the Ordinary is entitled to do; and the King's writ came to him a year afterwards.

Scrope. After that the church became void by John of Badingham's death etc., the King, as soon as he received notice, presented his clerk, John of Woodford,² and William of Bovill made objection; and the King brought the *quare impedit* and recovered; and so the King presented within the time, and brought his writ when he heard of the objection; and he hath so continued his prosecution of the matter until the end. And because time runneth not against the King, he had a writ to the Bishop ordering him to receive his presentee, but the Bishop refused; and we ask judgment whether he can excuse himself for this misprision.

Herle. The King had a writ by which the Bishop was informed that the King had the presentation for the present turn by the grant of William of Bovill, which fact supposeth that, before William's grant, William had the right to present, seeing that it was by William's grant that the King acquired the right to present, which William did not fill the church within the time allowed to him according to the law touching presentations, which was known to him. The Bishop was certified by writ and by inquest. Wherefore the Bishop, as Ordinary, made provision; and we ask judgment whether you can attach any tort in the Bishop.

Scrope. If a plea be brought between persons of equal position and the plea be argued within the six months, and during the pendency of the plea the Bishop encumber the church, he will have to disencumber the church whether he will it or not. Here, where it is the King who recovereth his right of presentation, the Bishop can none the more

¹ Corrected from the Record.

² See note, p. 169.

doner oghtaunce le roy de son presentement qe il ne purra encombre deynz le tens done a altres pur ceo qe nul tens court al roy.

Herel. Le iugement ne sei tint nient sur le dreyt le roy eynz sur graunt William de bouil par quel graunt accioun acrut al roy a presenter dunk par mie ceo graunt sei uestit dreyt de presentement al roy dunk de puyz qe le roy par force del graunt el-yme ceo presentement le presentement de dreyt a luy apendait qe graunta dunk le bref qe vint al euesqe luy aprit qe William auoit issi grannte al roy qant adunk quel bref vint vn an apres le tens et de ceo qe il fut issi apri par bref le roy qele dreyt del presentement deuaunt fut a William semble a nous qe le euesqe nad rien mespris.

Scrop. Il ne poet dedire qe duraunt le tens le roy presenta si tost com la notice luy vint et pur ceo qe il trona destourbaunce porta son quare impedit et pleda taunqe la fine qe le bref luy vint deuaunt quel tens eynz qe il fut apri par le bref il auoit purueu pur la eglise la ou ele fut litigieuse et dount plee fut pendaunt en ceste court par qay moy semble qe de cest mesprisioun ne poet il estre excuse.

Herel. Vous pledeisez bien si le iugement sei ont fet sur son dreyt mes ore il est sur autri graunt qe suppose dreyt auer este en la persone cely qe graunta deuaunt le graunt qar si le dreyt out este discusse et William out reconeri William ne out rienz enporte mes ore le dreyt William demora tanke le graunt et le tens passa tanke William fut dreyt patron com il fut apri par lenqueste et le bref etc.

Denom. Mes qe partie voile fayre defaute ou uoile graunter la demoustraunce le roy il ne luy poet pas chacer luy a trauerser si il ne voile dunke del hure qe la demoustraunce le roy nest mie dedit iugement sei prendra sur la force de la demoustraunce qe est de force pur ceo qe ele nest mie dedit. Et de autre parte pur ceo qe nul tens court al roy il ne deit mie auer damages dount del hure qe sur la demoustraunce le roy iugement par le graunt sei fit par qay le euesqe en taunt qe il purient pendaunt le plee en la court le roy et le recouerer sei fit apres pur le roy de quel plee il fut conoisaunt qe il ne sei pout excuser.

deprive the King of his right to present, since no time runneth against the King, than he could encumber [the church] within the time allowed to other persons ; for no time runneth against the King.

Herle. The judgment did not turn upon the King's [absolute] right, but upon the grant by William of Bovill, by which grant a right to present accrued to the King. By this grant, then, the right to present was vested in the King. Since, then, it is in virtue of this grant that the King claimeth the presentation, [it followeth that] the presentation belonged of right to him who made the grant. The writ, then, that came to the Bishop certified him that William had made this grant to the King. Since, therefore, the writ came, a year after the [allowed] time, and the Bishop was certified by the King's writ that the right to present was formerly in William, it appeareth to us that the Bishop hath done naught improperly.

Scrope. He cannot deny that the King presented during the time [allowed] as soon as notice [of the voidance] came to him ; and because he found that contest was raised he brought his writ of *quare impedit* and he carried it through to judgment. Before that judgment was given the Bishop, although he was notified by the writ that the church was the subject of litigation, and that a plea in respect of it was hanging in this Court, provided for the church : and therefore it seemeth that he cannot justify this improper action.

Herle. Your plea would be good if the judgment had turned upon the King's right, but here it turned upon the grant by another, which supposeth the right to have been, before the grant, in the person of him that made the grant. For if the right had been argued and William had recovered it, William would have gained naught¹ ; and here the right remained in William until the grant, and up to the expiration of the time William was the right patron, as the Bishop was certified by the inquest and the writ etc.

Denham. Although one party may be willing to make default, or be willing to admit the King's demonstrance, he cannot be driven to traverse it against his will. Since, then, the King's demonstrance is not denied, judgment will turn upon the effect of the demonstrance, which is of effect because it is not denied. And, moreover, because no time runneth against the King, he is not entitled to damages. Since, then, the judgment upon the King's demonstrance will turn upon the grant, the Bishop, therefore, inasmuch as he provided [for the church] while the plea was hanging in the King's Court, and recovery was gotten afterwards for the King, of which plea the Bishop had knowledge, cannot justify himself.

¹ Because his right to present had lapsed.

IV.¹

En vn Quare non admisit qe le Roi porta etc. ou le Roi auoit recoueri par le Quare impedit vers vn A.

Herle. Vn I. fut persone etc. par le presentement lauaundit A. par qi mort etc. le quel A. presenta vn B. sur quei leueske enquist etc. et trona etc. qe A. fut verrai patroun Et pur ceo qe lauantdit B. ne suist pas a auer institucioun deinz le temps etc. leueske purueit etc. com en le dreyt A. pus vn an apres le temps etc. bref vient al Eueske de receiure etc. al presentement le Roi le quel bref voleit qe lauaundit A. auoit graunte le presentement au Roi hac vice issint qe le presentement le Roi serreit en le dreyt A. et ne my en son dreit demene auant quel graunt Leueske auoit done com en le dreit mesme celuy A. pur temps passe iugement si tort en sa persone etc.

Lautre demanda iugement de ceo qil auoit conu le recouerir le Roi ou nul temps ne acourt au Roi et deinz les iij. symeins apres la mort I. qe fut persone le Roi porta son bref vers lauaundit A. pur ceo qil luy destourba etc. et le tittle le Roi fut pur ceo qe mesme celuy A. tient du Roi iij. acres de terre a quei lauouesoun etc. et fist de ceo alienacioun a vn C. a terme de sa vie sanz garaunte etc. parount le dreit acreust etc. et coment qe A. graunta ceo resort a tittle le Roi et issint recoueri en son dreit etc. qar sil ne eust moustre par counte son dreit coment qe lautre enst graunte il ne eust rien recoueri par quei ceo proue le recouerir en son dreit.

Berr. Il ni ad rien a veer mes si le recouerir doit estre iuge en le dreit le Roi solome son tittle ou en le dreit A. solome son graunt.

Et sic Nota qe temps ne acourt pas au Roi quant il recouure sur soen tittle mes si sur autri graunt temps luy encourra com vers celuy par qi graunt il recouure etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207). r. 263. Suffolk.

Iohannes Episcopus Norwicensis attachiatus fuit ad respondendum domino Regi de placito quare cum Idem dominus Rex in Curia hic per con-

¹ Text of (IV) from Z.

IV.

In a *quare non admisit* which the King brought etc. after the King had recovered against one A. by the *quare impedit*—

Herle. One J. was parson etc. by the presentation of the aforesaid A. By J.'s death the church became void. The said A. presented one B.; and thereupon the Bishop held an inquest, and it was found etc. that A. was the true patron. And because the aforesaid B. did not sue to have institution within the time etc. the Bishop was entitled [to present] as in the right of A. Then, a year after the time etc., a writ came to the Bishop bidding him receive etc. on the presentation of the King, which writ stated that the aforesaid A. had granted the presentation to the King for this turn, so that the King's presentation would be made as of A.'s right and not of his own right. But before this grant [by A. to the King] the Bishop had presented as of the right of this same A. because of lapse of time. Judgment whether he hath been guilty of a tort in his person etc.

The other side asked judgment on the ground that the Bishop had admitted the recovery by the King and that time doth not run against the King; and that the King had brought his writ against the aforesaid A. for disturbance etc. within three weeks of the death of J., who was parson; and the King's title was derived from the fact that A. held of the King three acres of land to which the advowson etc., and alienated them to one C. for the term of his life without the authority etc., whereby the right accrued etc., and, because A. granted, that [land and appendant advowson] resorted to the King's title, and he therefore recovered in his own right etc.; for if he had not shown in his count that he had the right because of A.'s grant, he would not have recovered aught; and so this proveth that he recovered as of his own right.

BENEFORD C.J. There is naught to consider save whether recovery should be adjudged as of the King's right by virtue of his title, or by virtue of the grant, as of the right of A.

And so note that time doth not run against the King, when he recovereth of his own title, but if he recover in virtue of the grant of another, then time will run against him as it would have run against him by whose grant he recovereth etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 263, Suffolk.

John, Bishop of Norwich, was attached to answer the lord King of a plea why when the same lord King in the Court here did by the considera-

Note from the Record—continued.

sideracionem Curie sue recuperavit presentacionem suam uersus Willelmum de Bouille ad ecclesiam de Badyngham ac eidem Episcopo mandauerat dominus Rex quod non obstante reclamacione predicti Willelmi ad presentacionem ipsius Regis ad predictam ecclesiam idoneam personam admitteret Idem Episcopus ad presentacionem Regis ad predictam ecclesiam idoneam personam non admisit in contemptu mandati ipsius domini Regis Et unde idem dominus Rex per Iohannem de Hoo qui sequitur pro eo dicit quod eum ipse in Curia hic a die sanete Trinitatis in xv. dies proximo preterita recu- perasset presentacionem suam uersus predictum Willelmum ad predictam ecclesiam per consideracionem etc. per quod mandatum fuit eidem Episcopo ex parte domini Regis per breue ipsius Regis quod non obstante etc. ad presentacionem ipsius domini Regis ad predictam ecclesiam idoneam personam admitteret Quod quidem breue predictus Iohannes de Hoo die Iouis proxima ante festum translacionis sancti Thome Martiri proximo sequentis apud Meleford in Comitatu Suffolcie in presencia Roberti de Bures Iohannis de Lutone et aliorum liberavit ipsi Episcopo et ipsum requisivit ex parte domini Regis quod idem Episcopus quemdam Iohannem de Catfelde¹ clericum Regis ad presentacionem domini Regis admitteret et litteras ipsius domini Regis ipsi Episcopo directas per quas dominus Rex prefatum Iohannem de Catfelde ad predictam ecclesiam presentavit similiter ipsi Episcopo porrexit predictus Episcopus spreto mandato Regis predicto prefatum Iohannem de Catfelde ad predictam ecclesiam ad presentacionem ipsius domini Regis admittere recusavit in contemptu domini Regis duorum milium librarum Et hoc paratus est verificare pro domino Rege etc.

Et Episcopus venit Et defendit vim et iniuriam et quicquid est in contemptu domini Regis etc. Et bene cognoscit quod ipse recepit predictum breue Regis per manus predicti Iohannis de Hoo predictis die et anno de prefato clerico Regis admittendo etc. Quem quidem clericum ad prefatam ecclesiam admittere non potuit nec debuit in hac parte etc. Dicit reuera quod quidam Iohannes de Badyngham ultima persona eiusdem ecclesie per cuius mortem etc. Et qui ad presentacionem predicti Willelmi de Bouille fuit admissus et institutus etc. obiit in festo sancti Nicholai anno Regni domini Regis nunc sexto post cuius mortem predictus Willelmus recenter ad eandem ecclesiam presentavit predictum Iohannem de Catfelde qui litteram ipsius Willelmi de presentacione predicta ipsi Episcopo liberavit pretextu cuius presentacionis idem Episcopus fecit ei litteram suam officiali suo de inquirendo super articulis consuetis prout moris est etc. qui inde fecit inquisitionem per quam compertum fuit quod predictus Willelmus de Bouille fuit verus patronus eiusdem ecclesie Et quod idem Willelmus ultimo presentavit ad predictam

¹ See note ² on the opposite page.

Note from the Record—*continued.*

tion of his Court recover his presentation against William of Bovill to the church of Badingham and the lord King sent his writ to the same Bishop commanding him, notwithstanding the claim of the aforesaid William, to admit a fit person to the aforesaid church on the presentation of himself, the King, the same Bishop did not admit a fit person to the aforesaid church on the presentation of the King, in contempt of the mandate of the same lord King; and in respect thereof the same lord King, by John of Hoo who sueth for him, saith that when he, in Court here on the quindene of the Holy Trinity last past, did recover against the aforesaid William his presentation to the aforesaid church by the consideration etc., and the same Bishop was therefore commanded on behalf of the lord King, by the writ of the same King, that, notwithstanding etc., he was to admit a fit person to the aforesaid church on the presentation of the same lord King, which writ the aforesaid John of Hoo did, on the Thursday next before the Feast of the Translation of St. Thomas the Martyr¹ then next following, at Melford in the county of Suffolk, in the presence of Robert of Bures, John of Luton and others, deliver to the said Bishop, and did request him, on the part of the lord King, that he, the same Bishop, would admit a certain John of Woodford,² the King's clerk, upon the presentation of the lord King; and did likewise tender to the same Bishop the letters of the lord King directed to the said Bishop, by which the lord King presented the aforesaid John of Woodford to the aforesaid church, the Bishop, recking naught of the aforesaid command of the King, refused to admit the aforesaid John of Woodford to the aforesaid church on the presentation of the said lord King, in contempt of the lord King [and to his damage] to the amount of two thousand pounds. And this he [John of Hoo] is ready to aver on behalf of the lord King etc.

And the Bishop cometh and denieth force and injury and whatever is in contempt of the lord King etc. And he doth fully admit that he received the aforesaid writ of the King at the hands of the aforesaid John of Hoo on the aforesaid day and year touching the admission of the aforesaid clerk of the King, the which clerk he could not nor ought to admit to the aforesaid church in the circumstances etc. He saith that the facts are that a certain John of Badingham, the last parson of the same church, by whose death etc., and who, on the presentation of the aforesaid William of Bovill was admitted and instituted etc., died on the Feast of St. Nicholas in the sixth year of the reign of the lord King that now is, upon whose death the aforesaid William did straightway present to the same church John of Catfield, who delivered to this same Bishop the letter of the same William touching the aforesaid presentation. And by reason of that presentation the same Bishop made for him his letter to his official, directing him to inquire of the articles, as is customary; and by that inquisition it was found that the aforesaid William of Bovill was the true patron of the same church, and that the same William did last present to the aforesaid church the aforesaid John

¹ July 3.

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² See the text and note, p. 169.

2 A

Note from the Record—continued.

ecclesiam predictum Iohannem de Badyngham Et eciam omnes articuli negocium illud tangentes pro statu ipsius Willelmi et clerici sui predicti comperti fuerunt per eandem [inquisitionem] Qui quidem Iohannes de Catfelde de presentacione predicta sibi facta per ipsum Willelmum exequenda iuxta vim et effectum inquisitionis predictae hucusque omnino supersedit per quod Idem Episcopus post tempus semestre elapsum a tempore quo predicta ecclesia incepit vacare per mortem predicti Iohannis de Badyngham providebat eidem ecclesie de rectore pro cura animarum ibidem gerenda etc. prout officio ipsius Episcopi loci ordinarii incubuit iuxta libertatem ecclesiasticam hactenus huiusmodi casu approbatam et optentam vnde cum dominus Rex presentacionem suam ad predictam ecclesiam per concessionem ipsius Willelmi de Bouille recuperavit prout liquet manifeste ex tenore brevis predicti quod sibi inde venit de prefato clerico Regis etc. quod predictus Episcopus hic profert in quo continetur quod cum predictus Willelmus in Curia Regis hic summonitus esset ad respondendum domino Regi de placito quod permetteret ipsum dominum Regem presentare idoneam personam ad ecclesiam predictam que vacat et ad regis spectat donacionem Idem Willelmus venit in eadem Curia domini Regis et concessit ipsi domino Regi presentacionem suam ad predictam ecclesiam hac vice videtur ipsi Episcopo quod ipse in nullo deliquit in premissis uersus dominum Regem Et petit iudicium.

Et Iohannes de Hoo pro domino Rege dicit quod statim postquam noticia ipsi domino Regi peruenit de morte predicti Iohannis de Badyngham Idem dominus Rex presentavit ad predictam ecclesiam quemdam Iohannem de Wodeforde clericum suum qui litteram domini Regis de presentacione sibi inde facta ipsi Episcopo liberauit apud Norwicum cuius presentacioni predictus Willelmus de Bouille se opposuit presentando ad eandem ecclesiam predictum Iohannem de Catfelde clericum suum per quod dominus Rex racione illius impedimenti tulit breue suum quare impedit uersus prefatum Willelmum returnabile in Curia hic In octabis Purificacionis anno regni Regis nunc Sexto infra duos menses a tempore mortis ultime persone etc. Ad quod quidem breue dominus Rex postmodum placitavit inde cum ipso Willelmo sumendo titulum suum presentandi ad eandem ecclesiam de iure corone sue racione alienacionis quam Willelmus de Bouille qui Manerium de Badyngham ad quod aduocacio predictae ecclesie pertinebat tenuit de domino Rege fecit Henrico de Catfelde et Iohanni fratri eius de quatuor acris terre in eodem Manerio et de aduocacione ecclesie predictae sine licencia ipsius domini Regis et quem titulum presentandi dominus Rex continuando inde persequabatur uersus prefatum Willelmum vsque ad prefatam quindenam sancte Trinitatis nunc proxime preterite Ad quem diem Idem Willelmus concessit domino Regi presentacionem suam ad eandem ecclesiam in forma qua idem dominus Rex illum exigebat vnde cum domino Regi racione prerogatiue sue nullum currit tempus de presentacionibus faciendis ad ecclesias

Note from the Record—continued.

of Badingham ; and also all the articles touching that matter as to the status of the same William and his aforesaid clerk were found by the same inquisition ; but the same John of Catfield hath wholly neglected up to now to seek execution in accordance with the force and effect of the aforesaid inquisition of the aforesaid presentation made to him by the said William ; and therefore the same Bishop did, after the lapse of six months from the time when the aforesaid church first became void by the death of the aforesaid John of Badingham, provide a rector for the same church for the caring of the souls of the same etc. as it pertained to the office of the same Bishop as Ordinary of the place to do in accordance with the ecclesiastical privilege hitherto approved and observed ; and therefore, seeing that the lord King recovered his presentation to the aforesaid church in virtue of the grant of the said William of Bovill, as doth plainly appear from the tenor of the aforesaid writ which came thereof to the same Bishop touching the same clerk of the King etc., which [writ] the aforesaid Bishop here proffereth, and in which it is set out that when the aforesaid William was summoned here in the Court of the King to answer the lord King of a plea that he permit the same lord King to present a fit person to the aforesaid church which is void and belongeth to the gift of the King, the same William came into the same Court of the lord King and granted to the same lord King his right of presentation to the aforesaid church for this turn, it seemeth to the same Bishop that in no way did he fail in the premises of his duty to the lord King ; and he asketh judgment.

And John of Hoo, for the lord King, saith that straightway upon the said lord King having notice of the death of the aforesaid John of Badingham the same lord King did present to the aforesaid church a certain John of Woodford, his clerk, who delivered to the same Bishop at Norwich the letter of presentation made to him thereof by the lord King ; whose presentation the aforesaid William of Bovill opposed by himself presenting to the same church the aforesaid John of Catfield, his clerk ; and by reason of that objection the lord King brought his writ of *quare impedit* against the aforesaid William, returnable in Court here in the octaves of the Purification in the sixth year of the reign of the King that now is, within two months from the time of the death of the last parson etc. To which writ the lord King afterwards pleaded thereof with the same William, taking his title to present to the same church in right of his Crown, by reason of the alienation which William of Bovill, who held the manor of Badingham, to which the advowson of the aforesaid church was appurtenant, of the lord King, made to Harry of Catfield and John, his brother, of four acres of land in the same manor and of the advowson of the aforesaid church without the licence of the same lord King, which title to present the lord King, by continuances thereof, prosecuted against the aforesaid William until the aforesaid quindene of the Holy Trinity now last past. Upon which day the same William granted to the lord King his right of presentation to the same church in the form in which the same lord King was claiming it from him. And since, by reason of his prerogative, time doth not run against the lord King in making presentations to churches which appertain

Note from the Record—continued

que ad ipsum pertinent nec ipsum Episcopum latere debuit de placito predicto inter ipsum dominum Regem et predictum Willelmum inde hic habito maxime cum Idem dominus Rex statim post mortem predicti Iohannis de Badyngham presentavit ad eandem ecclesiam predictum Iohannem de Wodeford qui recenter litteram ipsius domini Regis de presentatione predicta prefato Episcopo liberavit sicut predictum est et quam quidem presentationem domini Regis ipsi Episcopo inde liberatam Idem Episcopus non dedit petit iudicium pro domino Rege de recognitione ipsius Episcopi in hac parte etc.

Dies datus est eis de audiendo iudicio suo hic a die sancti Hillarii in xv. dies in eodem statu quo nunc salvis partibus rationibus suis hinc inde dicendis etc. Postea ad diem illum venerunt tam predictus Iohannes de Hoo qui sequitur pro Rege quam predictus Episcopus Et idem Iohannes de Hoo profert breve domini Regis nunc clausum Iusticiariis suis hic directum in hec verba Edwardus dei gracia etc. Iusticiariis suis de Banco salutem Cum nos in Curia nostra coram vobis per breve nostrum recuperavimus uersus Willelmum de Bouille presentationem nostram ad ecclesiam de Badyngham per considerationem eiusdem Curie mandavimus per breve nostrum de iudicio venerabili patri Iohanni Norwicensi Episcopo loci diocesano quod non obstante reclamacione prefati Willelmi idoneam personam ad presentationem nostram admitteret ad ecclesiam predictam et postmodo pro eo quod idem Episcopus spreto mandato nostro predicto huiusmodi personam ad presentationem nostram ad ecclesiam illam admittere non curavit ipsum attachiare precipimus essendi coram vobis in dicto Banco ad certum diem iam preteritum ad ostendendum quare idoneam personam ad presentationem nostram ad eandem ecclesiam non admisit idem Episcopus coram vobis in eodem Banco ad diem illum personaliter comparens contra nos excipiendo se personam aliquam ad dictam ecclesiam ad nostram presentationem virtute predicti brevis nostri de iudicio admittere non debere eo quod tempus semestris a tempore quo ecclesia illa per mortem ultime persone eiusdem cepit vacare elapsus fuerat antequam idem breve de iudicio ei extitit liberatum vosque ad iudicium in dicta loquela reddendum occasione allegacionis illius ac si tempus nobis sicut ceteris de regno nostro in huiusmodi casibus curreret hucusque procedere distulistis et adhuc differetis in nostri iuris regii preiudicium manifestum prout intelligi nobis datur volentes igitur tam nobis quam prefato Episcopo quod fuerit fieri in premissis vobis mandamus quod si ita sit tunc habito respectu debito ad recuperare nostrum predictum quam ad statum nostrum regium et ius nobis specialiter competens in hoc casu ad reddicionem iudicii predicti sine ulterioris dilacionis incomodo procedatis prout de iure et secundum legem et consuetudinem regni nostri fuerit faciendam. Teste me ipso apud Westmonasterium xliii. die Februarii anno regni nostri octavo. Et super hoc idem Iohannes petit [quod] habeant respectum ad recuperare Regis predictum et etiam ad prerogativam suam que ei competit in huiusmodi casu procedant ad iudicium pro domino Rege.

Note from the Record—*continued.*

to him, nor ought the said Bishop to have been ignorant of the aforesaid plea between him, the lord King, and the aforesaid William here had thereof, especially as the same lord King did immediately after the death of the aforesaid John of Badingham present the aforesaid John of Woodford to the same church, who did straightway deliver to the aforesaid Bishop the lord King's letter of presentation, as is aforesaid, and since the same Bishop doth not deny that that same letter of presentation of the lord King thereof was delivered to him, he asketh judgment for the lord King of the admission of the said Bishop in these circumstances.

A day is given them to hear their judgment here on the quindene of St. Hilary in the same state as they now are, the right of stating their arguments therein being saved to the parties etc. Afterwards, on that day, both the aforesaid John of Hoo, who sueth for the King, and the aforesaid Bishop came. And the same John of Hoo proffereth the letter close of the lord King that now is directed to his Justices here in these words: Edward, by the grace etc., to his Justices of the Bench, greeting. Whereas we recovered in our Court before you by our writ against William of Bovill our presentation to the church of Badingham by the consideration of the same Court, and commanded by our judicial writ the venerable Father John, Bishop of Norwich, Diocesan of the place, notwithstanding the claim of the aforesaid William, to admit a fit person upon our presentation to the aforesaid church, and afterwards, because that same Bishop, setting at naught our aforesaid command, neglected to present such a person to that church upon our presentation, we ordered that he should be attached to be before you in the said Bench upon a certain day now past to show why he did not admit a fit person upon our presentation to the same church, the same Bishop, appearing in person on that day before you in the same Bench, objected against us that he ought not to admit any person to the said church on our presentation by virtue of our aforesaid judicial writ, because a period of six months had elapsed from the time when that church first became void by the death of the last parson of the same before the same judicial writ was delivered to him; and [seeing that] you have hitherto deferred and still do defer giving judgment in this matter on that exception taken and also whether against us, as against all other of our realm, time runneth in cases of this kind, to the manifest prejudice of our royal right, as we are given to understand, We, therefore, desiring that justice shall be done both to ourselves and to the aforesaid Bishop in the premises, do command you that if it so be, then, due regard being had to our aforesaid recovery as well as to our royal estate, and the right specially inherent in us in this matter, you do proceed to render the aforesaid judgment without the harm of further delay, as it ought to be rendered by right and according to the law and custom of our realm. Witness myself at Westminster, the 11th day of February in the eighth year of our reign. And thereupon the same John of Hoo asketh that [the Justices] having regard to the aforesaid recovery of the King, and also to his prerogative which is inherent in him in a case of this kind, will proceed to judgment for the lord King; and that the same John be advised here in

Note from the Record—continued.

Et Idem Iohannes admonendus in Curia hic super iure et prerogatiua domini Regis Postea habito super hoc colloquio per Iusticiarios cum domino Rege in parlamento suo etc. Idem dominus Rex precepit Iusticiariis hic quod placitum inde uersus ipsum Episcopum ex certis causis cessaret Ideo predictus Episcopus ad presens sine die etc.

29. THE KING *v.* WASHINGLEY.¹I.²

Quare impedit.

Nostre seigneur le Roi porta le quare impedit vers Elizabet qe fut femme William de Walsingley et dist qe a ly apent a presenter par la resoun de la garde de la terre et del heir William de Walsingley en sa meyn esteaunt et dist qe vn Robert de Walsingley ael Lenfaunt fu seisi del maner de Walsingley a qey lauowesoun etc. en tens le Roi Edward pere le Roi qore etc. et en mesme le tens presenta vn son clerk P. par noun qe a son presentement etc. dount apres la mort [Robert] le Roi Edward pere le Roi etc. seist le maner etc. par le nounage William fuitz Richard [sic] et dona le maner a quey lauowesoun etc. a Honfrey de Waldene le quel presenta etc. a mesme lesglise vn G. par qy mort etc. doun le Roi qore est par le noun age Richard de Walsingley fuitz lauaundit William seist le maner de Walsingley a qey lauowesoun etc. et touz cez terres feez et auowesouns et dona la garde del corps et des terres a Robert de Waceuil reseruauant a luy lauowesoun et issint apent a luy etc.

Herle. La ou le Roi prent son tittle de presenter par la resoun de la terre et del heir William de Walsingley en sa garde esteaunt nous vous dioms qe al tens qe Lesglise se voida il ne fu pas seisi de la garde de la terre ne del heir ne luy ceo iour nest iugement si le Roi a cele demonstraunce deit estre resceu.

Tou. Nous auoms dist qe le Roi seist le maner a qay etc. et dona le maner a Robert de Waculle et retint lauowesoun de vers luy issint est le Roi seisi del auowesoun et vous ne maustrez pas qe vous auetz

¹ Reported by *E* and *H*. Names of the parties from the Plea Roll. ² Text of (1) from *E*.

Note from the Record—*continued*.

Court as to the right and prerogative of the lord King. Afterwards, this matter having been discussed by the Justices with the lord King in his Parliament etc., the same lord King sent his precept to his Justices here that the plea thereof against the said Bishop should, for certain reasons, be stayed. So the aforesaid Bishop for the present is without day etc.

29. THE KING v. WASHINGLEY.¹

I.

Quare impedit.

Our lord the King brought the *quare impedit* against Elizabeth that was wifo of William of Washingley and said that it belongeth to him to present, by reason of the wardship of the land and of the heir of William of Washingley that is now in his hand; and he saith that one Robert of Washingley, grandfather of the infant, was seised of the manor of Washingley, to which the advowson etc., in the time of King Edward, father of the King that now etc., and in his time presented one P. by name, his clerk, who, on his presentation etc. Afterwards, on the death of Robert, the King Edward, father of the King etc., seized the manor etc. because of the nonage of William, son of Robert, and he gave the manor to which the advowson etc. to Humphrey of Walden, who presented etc. to that same church one G., by whose death etc. Afterwards the King that now is, because of the nonage of Richard of Washingley, son of the aforesaid William, seized the manor of Washingley, to which the advowson etc., and all his lands, fees and advowsons, and gave the wardship of the body and of the lands to Robert of Waceville, reserving to himself the advowson; and thus it belongeth to him etc.

Herle. Whereas the King taketh his title to present from the fact that the land and the heir of William of Washingley are in his wardship, we tell you that at the time when the church became void the King was not seised of the wardship of the land nor of that of the heir, nor is he to-day. Judgment whether the King ought to be received to this demonstrance.

Toudeby. We have said that the King seized the manor to which etc. and gave the manor to Robert of Waceville and held back the advowson for himself, so that the King is seised of the advowson; and you do not show that you have a right to the advowson. It is

¹ See the Introduction, p. xlviii above.

dreit a lauouesoun par qey a vous ne apent pas a countrepleder la demustraunce le Roi et prioms pur le Roi bref al Euesqe.

Herle. Dunke le clamez vous com gros et neint apendaunt et ceo est contrarie a vostre demustraunce iugement si vous deuez estre reseu.

Scrop. Si ceo fu vers altre persone qe vers le Roi et il ne pursuyt pas son titil en eas la demustraunce serreit mauueys mes issint nest pas vers le Roi qe mesqe le Roi se fit titil par vne voye et troue seit son titil par altre par taunt le Roi ne serra pas oste de sa demustraunce qe ceo est par resoun de prerogative.

Denum. Salue nous seit vnkor le Roi a cele demustraunce ne deit estre reseu qe la ou il dit qe la auouesoun est apendaunt al maner de W. par resoun de quel apendaunce et par le nounage le heir il seist etc. la dioms vous qe vn nostre auneestre en tenps le Roi Richard dona mesme Lauouesoun al Abbe de Croyland en eschaunges pur vne boue de terre a tenir del Abbe et de eez successeurs par fealte et vne Rose par an pur touz seruiees issint qe pus eel tenps eel auouesoun ad este com gros ou le Roi se fet titil com apendaunte la quele nest pas apendaunte a ceo qe nous auoms mustre iugement.

Malb. Quant le Roi doune terre a qey auouesoun est apendaunt et il retent lauouesoun vers luy et depus qe lauouesoun si est en sa meyn nient suy hors de sa meyn par syute en Chauncerie le quel il seit apendaunt ou neient apendaunt a nul altre ne apent forge a luy si la qe ele seit suy hors de sa meyn par due processe.

Scrop. Si auerement se ioynsist sur lapendauncie et troue fut neient apendaunt la ou le Roi le fist apendaunt par sa demustraunce vnkor par taunt ne serra pas le Roi oste del presentement depus qe lauouesoun est en sa meyn.

Den. Si sa demustraunce ne seit pas garaantie de son bref il ne deit estre respoundu qe il voet estre respoundu pur resoun et ceo pert bien en taunt qil nous fet venir a mustre par qey le presentement a luy ne apent.

Scrop. Nous ne pooms altre bref auer pur le Roi et solom nostre bref la demustraunce est acordaunte.

Herle. Vous purriez auer eu commune bref et issint ad homme vse auant eez heures.

Berr. Si vous voletz oster le Roi de ceo presentement il vous

not competent to you, therefore, to counterplead the King's demonstration, and we pray a writ for the King to the Bishop.

Herle. You claim, then, that the advowson is a gross and not appendant, and that is contrary to your demonstration. Judgment whether you ought to be received.

Scrope. If this were pleaded against any other than the King and the complainant did not abide by his title [as set out in the demonstration], then, maybe, the demonstration would be bad; but it is not so against the King, for though the King lay his title for one reason and his title be found to arise from another, the King will not, because of that, be ousted from his demonstration, and his prerogative is the reason of this.

Denham. Let the point be saved to us. For yet another reason the King ought not to be received to this demonstration, for whereas he saith that the advowson is appendant to the manor of Washingley, and that by reason of that appendancy and because of the infancy of the heir he seized etc., we tell you that one of our ancestors in the time of the King Richard gave the same advowson to the Abbot of Crowland in exchange for a bovat of land to be held by the Abbot and by his successors by fealty and [the service of] one rose a year for all services, so that since that time this advowson hath been held as a gross; and the King baseth his title on the appendancy of that which is not appendant, as we have shown. Judgment.

Malberthorpe. When the King granteth land to which an advowson is appendant and he retaineth the advowson for himself, and if the advowson, after it hath come into his hand, be not sued out of his hand under a writ out of the Chancery, then, whether it be appendant or not appendant, it belongeth to none other than the King until it be sued out of his hand by due process.

Scrope. If averment be joined on the question of appendancy and it be found that it is not appendant, where the King made it appendant in his demonstration, yet, for all that, the King will not be ousted from presenting, since the advowson is in his hand.

Denham. If his demonstration be not warranted by his writ, he ought not to have answer, for he wisheth to be answered specifically; and that clearly appeareth from the fact that he hath made us come to show why the presentation doth not belong to him.

Scrope. We cannot have any other writ for the King, and the demonstration is accordant with our writ.

Herle. You could have had the common form of writ, and such hath been used before now.

BEREFORD C.J. If you want to oust the King from this presenta-

couent assigner resoun par quey depus qil com vnkor seisi del auouesoun
 qe quant il seist les terres William il ne poeit autrement seiser lauoue-
 soun forqe gayter la voidaunce et presenter par quei respounez.

Herle. Nous entendoms qe le Roi deit ne ne voet cel auouesoun
 seisir par resoun de garde ne par taunt le presentement clamer car nous
 auoms dit qe lauouesoun est tenu del Abbe de Croyland par certeynz
 seruices et en sokage iugement sil deyue a cel bref qe comprend [?] le
 presentement a luy apendre par resoun de garde estre respoudu.

Scrop. Sil tent vne acre de terre en chef del Roi le Roi seisera tot
 sa terre par resoun de sa prerogative ore dioms nous qe le maner de
 W. si est tenu en chef del Roi iugement si par taunt poetz oster le Roi
 etc. et prioms bref etc.

Denum. Le Roi nad pas dreit de seiser lauouesoun si ele seit tenu
 en sokage [*sic*].

Scrop. Si lavouesoun fut en lue del demene le Roi ne la seiserait
 il par le quel qe il fu sokage ou noun.

Herle. Il respoudrait al heir des issues et en taunt il nauerait mye
 dreit de seisir.

Den. De pus qe lauouesoun nest pas apendaunte al maner auxi
 com nous auoms mustre eynz est tenu par sokage le Roi nad pas dreit
 de seisir ne de presenter qe si le Roi auoit seisi sa terre qe fut tenu en
 sokage et il fist sa suggestioun en Chauncerie qil fu tenu en sokage il
 auerait bref al eschetur qil osteyt la meyn et si rien ont leue en le mene
 temps qil respoudrait dount depus qe nous mustroms cel auouesoun
 estre tenu en sokage le Roi nad pas cause de seiser par qey nous demaun-
 dons iugement si etc.

Berr. Vous pledetz plus a disheriter lenfaunt qe de inheriter le
 qe qantqe le Roi plede si est de affermer dreit en la persone le heir et
 il cleyme presentement com gardeyn et vous ne mustrez pas qe vous
 auez dreit al presentement mes estes a pur prendre sur le heir come
 tolour par qey si vous ne poetz altre estat affermer en vostre persone
 vous nauendrez mye de oster le Roi etc.

tion you must assign a reason therefor, seeing that he is still seised of the advowson ; for when he seized the lauds of William, he could not seize the advowson for any other purpose than to watch for the voidance and to present ; and therefore answer.

Herle. We think that the King is not entitled and that he will not wish to seize this advowson on the ground of wardship, nor to claim the presentation for the like reason ; for we have said that the advowson is holden of the Abbot of Crowland by certain services and in socage. Judgment whether he ought to be answered to this writ which assumeth that the presentation belongeth to him in right of wardship.

Scrope. If a man hold a single acre of land of the King in chief, the King will seize all his land in virtue of his prerogative. We tell you now that the manor of Washingley is holden of the King in chief. Judgment whether by such reason [as you allege] you can oust the King etc. ; and we pray a writ etc.

Denham. The King hath no right to seize the advowson if it be held in socage.

Scrope. If it were a matter of the demesne rather than of the advowson, would not the King seize it whether it were socage or not ?

Herle. He would, [if it were socage,] be answerable to the heir for the issues, which would show that he had no right to seize it.

Denham. Since, as we have shown, the advowson is not appendant to the manor, but is holden in socage, the King hath no right to seize it, nor to make a presentation ; for if the King had seized the heir's land which is holden in socage and the heir had made his suggestion¹ in Chancery that the land was holden in socage, he would have got a writ to the Escheator to release it ; and, if any profits had been taken from it in the meantime, the King would have to answer for them. Since, then, we show that this advowson is holden in socage, the King hath no ground for seizing it ; and, therefore, we ask judgment whether etc.

BEREFORD C.J. You are pleading rather to the disinheritanee of the heir than to the maintenance of his inheritance, for the force of the King's pleading is to affirm that the right is in the person of the heir, and he, the King, claimeth the right to present only as guardian ; while you do not show that you have any right to present, but are acting to the detriment of the heir, as his tollor. So, then, if you cannot prove some other estate in yourself, you will never succeed in ousting the King etc.

¹ A 'suggestion' was, speaking generally, an *ex parte* statement.

Den. Nous sumes somouns de respoundre al Roi ore est a nous de faire nostre titil ou a defaire son titil nous le defesoms etc. par qey etc.

Berr. Apres la mort Robert de W. quant le Roi Edward seisist le maner a qey lauouesoun etc. par reson de garde et Humfrey de Walden com assigne le Roi presenta etc. et pus le Roi qore est apres la mort William de W. son fuitz seisa etc. et dona la garde a R. de Waceuille reseruauant a luy lauouesoun et issint le Roi com gardeyn en affermaunt le dreit le heir de cel presentement touz iours fu seisi de les terres et del auouesoun coment le ostrez vous qe pas ne mustrez dreit en vostre persone.

Herle. Nous vous dioms qe lauouesoun nest pas apendaunt al maner eynz est vn gross a par luy sieut denaunt est mustre etc. tenu del Abbe de C. en sokage par certeyn seruice et vous dioms qe a ceste Elizabeth apente a presenter com a plus procheyn amy Lenfaunt a qy cest heritage ne poet descendre com al profit le heir pur ceo qe lauouesoun est tenu en sokage et ele est mere Lenfaunt demaundoms iugement si le Roi en ceo eas poet cest auouesoun seisir.

Scrop. Et nous iugement deus qe vous ne poetz desdire qe Hounfrey de Walden com assigne le Roi ne presenta et qe le Roi seisist les terres Lenfaunt par sa prerogatif ensemblement od lauouesoun fu ceo a dreit fu ceo a tort vous ne poetz pas oster le Roi de sa possессион saunz suit faire et processe en la Chaunceerie et ceo nanez pas fet iugement et prioms pur le Roi bref al Euesqe.

Scrope Iustice. Nous auoms troue par domesday qe lauouesoun est apendaunt al maner de Wassingley qest tenu de nostre seigneur le Roi en chef et vous dites qe lauouesoun est tenu del Abbe de Croyland par fait et par les seruices de vne Rose par an et est seure et fet vn gros en luy mesme et de ceo ne mustrez rien a la Court par quey la Court agarde le Roi vn bref al Euesqe nemye contresteaunt la cleym Elizabeth et Elizabeth en la merei.

II.¹

Le roy porta son quare impedit vers Elizabet de Wastienglay et dit qe cest Elizabet atort auoit destourbe nostre seigneur le roy a presenter al eglise de Wastingley que uocat etc. et ad eius spectat

¹ Text of (II) from H.

Denham. We are summoned to answer the King. It is now for us to prove our own title or to defeat the King's title. We do defeat it etc., and therefore etc.

BEREFORD C.J. After the death of Robert of Washingley, King Edward seized the manor to which the advowson etc. by reason of wardship, and Humphrey of Walden, as the King's assignee, presented etc., and the King that now is did afterwards, on the death of William of Washingley, Robert's son, seize etc. and granted the wardship to Robert of Waceville, reserving the advowson to himself, and so was seised of the lands and of the advowson as guardian, and always asserted the right of the heir in the presentation. How, then, are you going to oust him unless you show a right in your own person?

Herle. We tell you that the advowson is not appendant to the manor, but is a gross of itself, as we have shown before etc., holden of the Abbot of Crowland in socage by a service certain, and we tell you that this Elizabeth is entitled to present, as the next of kin to the infant to whom estate of inheritance cannot descend, the presentation being the heir's profit, because the advowson is holden in socage, and Elizabeth is the heir's mother. We ask judgment whether the King is entitled in these circumstances to seize this advowson.

Scrope. And we ask judgment whether, seeing that you cannot deny that Humphrey of Walden presented as the King's assignee and that the King, by virtue of his prerogative, did actually, whether rightly or wrongly, seize the lands of the infant together with the advowson, you can oust the King from his possession without making your suit and process in the Chancery, and you have not done that. Judgment, and we pray a writ for the King to the Bishop.

Scrope J. We have found by Domesday that the advowson is appendant to the manor of Washingley, which is holden of our lord the King in chief; and you say that the advowson is holden of the Abbot of Crowland by a deed and by the yearly service of a rose, and that the advowson was severed and made a gross of itself; but of all that you tender no proof to the Court. The Court, therefore, doth grant the King a writ to the Bishop, the claim of Elizabeth notwithstanding; and Elizabeth is in mercy.

II.

The King brought his *quare impedit* against Elizabeth of Washingley and said that this Elizabeth had wrongly disturbed our lord the King in presenting to the church of Washingley which is void etc. and apper-

donacionem et pur ceo atort qe vn Wauter de Wastinglay le maner de Wastingley a qy la auoweson apent tynt de Roy Edward pier nostre seynur le roy qe ore etc. le quel Wauter en son tens presenta vn etc. de Wauter descendit a R. de R. a R. deynz age par quay le Roy la garde du maner et du cors R. fiz et heir R. le seisit et la garde du maner dona et graunta vnfray de Walden en qy tens la eglise sey uoyda par qay il presenta a ceste eglise vn son clerk R. de S. par noun par qy mort la eglise est ore voide etc. le maner est ore deuenuz en la garde le roy par le nounage R. fiz R. de W. issi apent al roy de presenter et Elizabet etc.

Denom. Sire nous vous dioms qe en le tens le roy Richard le maner fut en la seisine de deux [seors] R. et W. dount la vne auoit la vne moite et lautre lautre la auoweson com gros en la seisine le Abbe de Croyland le maner entierment du fee le roy la auoweson du fee de l. louetost demaundoms iugement si par appendaunce a ceo maner poez presenter a cele eglise de autri fee et la auoweson grosse par say et desapendaunte.

Scrop. Qe responez vous a ceo qe nous dioms qe cely qe auoit la garde le roy presenta com apendaunt ceo auoms pur nous et ne moustrez rien de dreyt en vostre persone coment ceo presentement vous doit demurrer et qe vostre destourbaunce seit couenable iugement.

Denom. Vous dittez qe le presentement a nous apent par resoun de appendaunce nous auoms moustre qe el est grosse par say qe le abbe de Croyland fut seisi de ceo com de grosse et en ceste graunta et rendit a W. pier R. par qy nounage vous clamez ceste garde de W. descendit le dreyt de cest auoweson a Robert en destourbaunce de vostre presentement auoms assez moustre et ceo sffit a mayntenyr nostre destourbaunce qe nous mettoms a vostre presentement.

Berr. Vous auez mester a moustrer coment la auoweson sait apendaunt il vous moustre qe ceo est grosse et si vous estrange il de vostre presentement dount couent il qe vous moustrez qe il sait apendaunt et ceo ne fetez vous nient mes pledez vn dereyn presentement et ne responez nient a ceo qe il ad mis coudre vous en defesaunt vostre estate qant ceo fut vne foitz grosse coment le freez vous apendaunt iames.

Inge. Si le roy eut seisi la garde vne foitz des tenementz en socage pur ceo nad il mie resoun autrefoitz de auer meyme la garde pur le

taineth to his donation ; and wrongly for this reason, namely, that one Walter of Washingley held the manor of Washingley, to which the advowson is appendant, of King Edward, father of our lord the King that now is etc., which Walter, in his time, presented one etc. From Walter [the right in the advowson] descended to R. From R. it descended to R. who was within age ; and the King, therefore, seized the wardship of the manor and of the body of R., son and heir of R., and gave and granted the wardship of the manor to Humphrey of Walden, in whose time the church became void, and Humphrey therefore presented to this church one R. of S. by name, his clerk, by whose death the church is now void etc. The manor hath now passed into the wardship of the King by reason of the infancy of R., son of R., of Washingley, so that it belongeth to the King to present, and Elizabeth etc.

Denham. Sir, we tell you that in the time of King Richard the manor was in the seisin of two sisters, R. and W., of whom one had one moiety and the other had the other. The advowson, as a gross, was in the seisin of the Abbot of Crowland. The whole manor was of the fee of the King. The advowson was of the fee of L. Lovetot. We ask judgment whether on the ground of appendancy to this manor you can present to this church which is of the fee of another and the advowson is a gross of itself and disappendant.

Scrope. What do you answer to our assertion that he who had the wardship by the King's grant presented to it as being appendant ? That is a fact in our favour ; and you show no right in your person, as that this presentation ought to be in your person and that your disturbance is justifiable. Judgment.

Denham. You say that the presentation belongeth to you by reason of appendancy. We have shown that [the advowson] is a gross of itself, that the Abbot of Crowland was seised of it as of a gross, and as such granted and surrendered it to W., father of R., by reason of whose nonage you are claiming this wardship. The right in this advowson descended from W. to Robert. We have shown sufficient to justify us in objecting to your presentation, and that is sufficient to maintain the objection which we have made to your presentation.

BEREFORD C.J. You must show how the advowson is appendant. He showeth you that it is a gross ; and if he be ousting you from your presentation you must show that it is appendant ; but you do not show that, but plead a latest presentation and answer naught to what he hath alleged against you in defeat of your estate. If this were once a gross can you make it appendant ? Never.

INOE J. If the King had once seized the wardship of tenements holden in socage, would he be justified in seizing the same wardship

acrochement qe il fet deuaunt ore ne pledez vous autre chose forsqe le dreyn presentement ou il uoleit auerer qe en le tens le Roy Richard la auoweson fut grosse par say et vous dient qe unkes puyz reioint com apendaunt et volent auerer cest a dire coment qe cely vmfray presenta a qay vous auez mester de responder et a mayntener le apendaunce.

Scop. Il pledent et ne moustrent riens pur eux par quel resoun ils presenterunt qar cely qy est destourbour si il voet bref auoyr al euesqe il couent qe il moustre son dreyt mes ore si cest auerement qe vous ioigniez sur le grosse si ceo fut troue vukore ne aueroynt ils mie bref al euesqe mes irroynt en la channeclerie et deliuerount cest auoweson hors de la mayne le roy et de puyz qe ils ne purroint dire qe ils issi vnt fete si destourbaunce en nostre presentement purunt metter.

Herel. Nous pledoms a la demoustraunce le roy en taunt qe le roy clame a presenter par resoun de apendaunce nous voloms auerer qe cest auoweson fut grosse issi qe com apendaunt ne poet le roy presenter et demaundoms iugement de la demoustraunce.

Toudeby. Nous auoms dit qe le maner ensemblement od la auoweson deuynt en la mayne le roy le roy dona la garde du maner od les apurtenaunces a Robert de balden qy assigna cest garde a Elizabet la auoweson demurra en la mayne le roy en pees pur ceo qe il ni fut nule especial clause de la auoweson en le fete par quel la garde passa pur ceo apent il al roy a presenter.

Denom. La demoustraunce le roy est fundu sur vn mauueys garaunt qar vostre garaunt voet qe il apent al roy a presenter par resoun de la garde de la tere del heyr R. de Wassynghay en sa mayne esteaunt et vous auez conu qe la garde de la terre est en la mayne elizabet la assigne R. a qy le roy ceo dona demaundoms iugement si le roy deue ou pousse rien enporter del hure qe il cleyme a presenter a ceste eglise par resoun de apendaunce al dit maner dount la garde est a altre qe est contrarie a vostre garaunt dount vostre demoustraunce est garanti.

Toudeby. Vous dites talent mesqe il soit oghte de la garde de la terre la garde de la auoweson luy demort pur ceo qe le roy ne sei oghte mie par especiale clause.

again by reason of the infringement of right which he had [previously] committed? You plead naught else than a latest presentation, while they are offering to aver that in the time of King Richard the advowson was a gross of itself and they tell you it was never subsequently rejoined [to the manor] as appendant, and they want to aver this, and you must answer that and prove the appendaney by showing how Humphrey came to present.

Scrope. They plead but they show naught for themselves why they presented, for if he that is a disturber would have a writ to the Bishop he must show his right; but now, even if this averment which you join on the gross were found [in their favour] yet they would not have a writ to the Bishop, but they would go into the Chancery and get deliverance of this advowson out of the King's hand; and since they cannot say that they have done this [we ask judgment] whether they can impute disturbance to us in our presentation.

Herle. We are pleading to the demonstrance of the King. Inasmuch as the King claimeth to present because of the appendaney [of the advowson], we are ready to aver that this advowson was a gross, so that the King could not appoint by reason of its appendaney, and we ask judgment of the demonstrance.

Toudeby. We have said that the manor together with the advowson passed into the hand of the King. The King gave the wardship of the manor with the appurtenances to Robert of Walden, who assigned this wardship to Elizabeth. The advowson remained in the King's hand undisturbed because there was no special clause touching the advowson in the deed by which the wardship passed; and therefore it belongeth to the King to present.

Denham. The demonstrance of the King is based upon a false assumption, for your assumption is that it belongeth to the King to present by reason of the wardship of the land of the heir of R. of Wasingley now being in the King's hand; and you have acknowledged that the wardship of the land is in the hand of Elizabeth, the assignee of Robert, to whom the King gave it. We ask judgment whether the King is entitled to or can take anything, since he claimeth to present to this church by reason of the appendaney [of the advowson] to the said manor, the wardship of which is held by another person, which is the contrary of the assumption on which your demonstrance is based.

Toudeby. You are talking at random. Though the wardship of the land passed from the King, the wardship of the advowson remained in him because the King did not by a special clause divest himself of it.

Scrop. Nous dioms qe il seisit les terres et la auoweson com il le poait seisir et gaita la voydance et presenta et issi fut nostre seigneur le roy seisi et nentendoms pas del hur qe il fut seisi si vous ne poez moustrer qe la mayne le roy sait oghte par due processe qe disturbance i poez mettre.

Denom. Nous vous dioms qe nostre seigneur le roy ne dait seisir cest auoweson qar le abbe de croiland dona cest auoweson qe fut en sa mayne com grosse a Wauter de Wassinglay et a Richard son frere en eschaunge pur vn mies et vne uirgate de terre a tenyr cest auoweson de cely abbe par les services de vne rose par an pur touz services et nentendoms pas qe nostre seigneur le roy deit seisir tenement par tiel service de autre tenu ne presenter com il ni est cause de seisir.

Scrop. Vous navez mie respoundu a ceo qe nous dioms qe la auoweson fut seisi com ele poait estre et noun pas delivere hors de la mayne le roy qar ou vne pee de terre est tenuz du roy il seisera touz autres tenementz tenuz de autre meske ils soient tenuz en socage et la couient il eynz qe les tenementz passent hors de la mayne le roy qe il suye en la chauneelrie pur la delivraunce.

Toudeby. Iohan de Asseby tynt la auoweson de vne eglise en socage son heyr deynz age vint en la garde le roy vynt la muer et elama presenter com plus procheyn amie ia pur taunt le roy presenta pur ceo qe il fut seisi du cors lenfaunt pur ceo qe profit del socage fut regardant al enfaunt.

Frysqueny. Vous dittez mal le roy presenta poynt eynz la muer.

Denom. Ou le roy ad dreyt a seisir il enportera les profiz durant sa seisine mes ou socage qant ieo prenq ma seisine hors de la mayne le roy ieo laureray eum exitibus leuatis par qay il semble qe il ne dait mie seisir en tiel cas ou son auauntage nest mie.

Scrop. Nous pledoms tute en lauauntage le enfaunt et a mayntenyr son dreyt et vous estes disturbour et ne affermez rienz de dreyt en vostre persone iugement.

Denom. Nous assignoms cause del disturbance du presentement le roy.

Scrop. Qy estes vous.

Berr. Dites nous quele resoun vous auer a destourber.

Scrope. We say that the King seized the lands and the advowson as he was entitled to seize them ; and he observed the voidance and presented ; and in this way our lord the King was seised ; and we do not think that, as he was seised, you can show that the King was divested [of the advowson] by such regular process as will enable you to impute disturbance in him.

Denham. We tell you that our lord the King was not entitled to seize this advowson, for the Abbot of Crowland gave this advowson, which was in his possession as a gross, to Walter of Washingley and to Richard, his brother, in exchange for a messuage and a virgate of land, to hold this advowson of that Abbot by the service of a rose every year for all services ; and we do not think that our lord the King is entitled to seize a tenement holden by such service of another, nor to present, since he had no right to seize.

Scrope. You have answered naught to what we say, that the advowson was seized, as it could be rightly, and was not delivered out of the King's hand ; for where one single foot of land is held of the King, he may seize all other tenements held of another, even though they be held in socage ; and in that case, in order that the tenements may be delivered out of the King's hand, the claimant must sue out a writ in the Chancery for their deliverance.

Toudeby. John of Ashby held the advowson of a church in socage. [He died and] his heir, being within age, came into the wardship of the King. The mother came and claimed to present as next friend. Nevertheless the King presented because he was seised of the body of the infant, and because the profits of what was held in socage belonged to the infant.

Priskency. What you say is not true. The King did not present, but the mother did.

Denham. Where the King is entitled to seize there he will take the profits during his seisin ; but, in the case of socage, when I get my seisin back out of the King's hand I shall get it with the profits which have accrued ; and therefore it seemeth that the King ought not to seize in circumstances where the profits do not accrue to himself.

Scrope. We are pleading wholly in favour of the infant and to maintain his right ; while you are disturbers and affirm no right in your own person. Judgment.

Denham. We are assigning a cause for the disturbance of the King's presentation.

Scrope. Who are you ?

BEREFORD C.J. Tell us what right you had for your disturbance of it.

Denom. enparla et reuynt et dit qe la auoweson fut grosse et tenuz en socage com auaunt fut dit et Elizabet mier lenfaunt plus procheyn amie cest asauer parent a qy heritage ne poait descender seisit la auoweson et presenta com ceste a qy la garde de socage apende et par ceste resoun destourbe ele.

Scrop. Del hur qe vous ne poez dedire qe le roy nest seisi et ne moustrez rien qe ceste chose seit deliuer hors de la mayne le roy par due processe demaundoms iugement eynz qe ceste deliuerance seit fete si desturbance purrout metter.

Denom. Mi esta nent suyer la deliuerance pur ceo qe le roy ne deit mie seisir des tenementz en socage tenuz qar de chescun seisin dount le roy sey meller il enportera les profitz et si il seise et prengne profitz de socage home recouera les profitz ensemblement od le grosse mes en ceo cas lenfaunt si le roy presentat serreyt oghte du profit de presentement par quel resoun le roy ne dait mie seisir.

Berr. Veez cy le domesday qe tesmoygne la apendaunce.

Et fecit legi et fuit ita Quidam Grimibaldus de Wastingley tenet de rege in capite unam virgatum terre et decem percucas et

aduocacionem

quandam cantariam cuidam presbitri et capellam de Wassingley per seruicium eundi nobiscum in exercitu nostro et ualet per annum. x.s.

Herel. Domesday fut fete en le tens saynt Edward qe fut graunt tens deuaunt le conquete de qay nous ne auoms a faire mes voloms auer la desapendaunce en la manere qe nous auoms dit cest a sauoir qe le abbe de croilaunde predecessour cesti abbe fut seisi del auoweson com de vn grosse en le tens le roy Richard et du son tens presenta son clerk Roger de Buston et deuaunt le tens le roy Richard son predecessour presenta com grosse et demaundoms iugement del lure qe ceo fut issi desapendaunt si le roy par resoun de apender puyse presenter.

H. Scrop. Pur ceo qe troue est par domesdaye qe est de recorde qe la auoweson fut apendaunt et ne moustrez rien de especialte qe sait si haute a prouer qe cest auoweson est grosse com le roy le proues apendaunt par la resoun qe vous tendez forsqe son auerement qe ceo

Denham imparled and came back and said that the advowson was a gross and was holden in socage, as was said before, and Elizabeth, the mother of the infant, his next friend, that is the [nearest] relation to whom the heritage could not descend, seized the advowson and presented as she to whom the wardship of the socage belonged; and for this reason she committed the disturbance.

Scrope. Seeing that you cannot deny that the King is seised, and you show naught to prove that this thing was delivered out of the King's hand by due process, we ask judgment whether they can impute disturbance, this deliverance not having been had.

Denham. It was not for me to sue deliverance, for the King was not entitled to seize tenements holden in socage, because the King will keep the profits arising out of any seisin of which he has possessed himself; but if he seize [tenements holden in] socage and take the profits, those profits are recoverable together with the gross. Now, in this case, if the King presented, the infant would lose the profit of the presentation, and for that reason the King was not entitled to seize.

BEREFORD C.J. See here the Domesday which witnesseth the appendancy.

And he made it to be read and it was in this wise: 'A certain Grimbold of Washingley holdeth of the King in chief one virgate and ten perches of land and a certain chantry for a certain priest and the advowson chapel of Washingley by the service of going with us in our army, and it is worth ten shillings a year.'²

Herle. Domesday was made in the time of St. Edward which was a long time before the Conquest, and we are not concerned with it; but we want to aver the disappendancy in the manner we have said, to wit, that the Abbot of Crowland, predecessor of this Abbot, was seised of this advowson as of a gross in the time of King Richard, and in his time presented his clerk, Roger of Baston; and his predecessor, before the time of King Richard, presented as to a gross; and, seeing that the [advowson] was thus disappendant, we ask judgment whether the King can present on the ground that it is appendant.

SCROPE J. Because it hath been found by Domesday, which is of record, that the advowson was appendant, and you show naught by way of specialty of force enough to prove that this advowson is a gross, while the King proveth that it is appendant, therefore, because you tender naught but an averment that it is a gross, while the King

^{1,2} There is nothing in the Domesday, of Huutingdonshire remotely re-

sembling this. For the actual text of Domesday see p. 189 below.

est grosse et le roy ad auere qe ceo est apendaunt par domesday agarde cest court qe le roy recouere son presentement qant a ore et Elizabet seit en vne bone amerciment pur sa destourbaunce.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 298, Huntingdonshire.

*Elizabetha que fuit vxor Roberti de Wassynge in misericordia pro pluribus defaultis etc.

Eadem Elizabetha summonita fuit ad respondendum domino Regi de placito quod permittat ipsum Dominum Regem presentare idoneam personam ad ecclesiam de Wassingle que vacat et ad ipsius Regis spectat donacionem ratione custodie terre et heredis Roberti de Wassingle infra etatem et in manu ipsius Regis existentis Et vnde Willelmus de Langele qui sequitur pro domino Rege Dicit quod quidam Walterus de Wassingle aliquando fuit seiscitus de manerio de Wassingle ad quod aduocacio eiusdem ecclesie pertinet et illud tenuit de domino Henrico Rege auo domini Regis nunc in capite vt de corona Anglie qui ad eandem ecclesiam presentauit quandam Hugonem de Wassingle clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore eiusdem Regis Henrici Et de ipso Waltero descendit Ius presentandi etc. ratione manerii predicti cuidam Radulpho vt filio et heredi. Et de ipso Radulpho cuidam Roberto vt filio et heredi qui fuit infra etatem etc. Ita quod idem manerium ad quod aduocacio etc. ratione minoris etatis eiusdem Roberti deuenit in seiscina Edwardi Regis patris domini Regis nunc nomine custodie etc. qui custodiam eiusdem manerii ad quod etc. et ipsius aduocacionis concessit cuidam Hunfrido de Waledene tenendam vsque ad legitimam etatem etc. Qui quidem Hunfridus vacante predicta ecclesia per mortem predicti Hugonis tanquam custos etc. ad eandem ecclesiam presentauit quemdam Alanum de Bolington clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore eiusdem Regis Edwardi patris etc. per cuius mortem predicta ecclesia modo vacat. Et de ipso Roberto descendit Ius presentandi etc. ratione manerii predicti isto Roberto vt filio et heredi qui nunc est infra etatem et in custodia domini Regis qui quidem Dominus Rex nunc seiscuit in manum suam predictum manerium et aduocacionem etc. nomine custodie ratione minoris etatis predicti heredis etc. et custodiam predicti manerii concessit cuidam Roberto de Waceuille tenendam vsque ad legitimam etatem etc. retenta in manu ipsius Regis aduocacione ecclesie predictae Et ea ratione quod idem Dominus Rex seiscitus est de aduocacione eiusdem ecclesie nomine custodie sicut predictum est pertinet ad ipsum dominum Regem ad eandem ecclesiam presentare etc. predicta Elizabetha ipsum dominum Regem iniuste impedit etc. Et hoc paratus est verificare pro domino Rege etc.

lath averred upon the record of Domesday that it is appendant, the Court giveth judgment that the King recover his presentation up to the present, and that Elizabeth be in good amercement for her disturbance.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 298, Huntingdonshire.

Elizabeth that was wife of Robert of Washingley in mercy for several defaults etc.

The same Elizabeth was summoned to answer the lord King of a plea that she permit him, the lord King, to present a fit person to the church of Washingley which is void, and appertaineth to the presentation of the said lord King by virtue of the wardship of the land and of the heir of Robert of Washingley who is within age and in the hand of the lord King. And thereof Walter of Langley, who sueth for the lord King, saith that a certain Walter of Washingley was at one time seised of the manor of Washingley, to which the advowson of the same church is appurtenant, and held it of the lord Harry the King, grandfather of the lord King that now is, in chief as of the Crown of England, who presented to the same church a certain Hugh of Washingley, his clerk, who, upon his presentation, was admitted and instituted in time of peace, in the time of the same King Harry; and from that Walter the right of presenting etc. in right of the aforesaid manor descended to a certain Ralph as son and heir, and from that same Ralph to a certain Robert as son and heir, who was within age etc., so that the same manor to which the advowson etc. passed into the seisin of King Edward, father of the lord King that now is, by reason of the infancy of the same Robert, in right of his wardship etc. who granted the wardship of the same manor to which etc., and the advowson to a certain Humphrey of Walden to hold until the lawful age etc., the which Humphrey, while the aforesaid church was void through the death of the aforesaid Hugh, did, as guardian etc., present to the same church a certain Alan of Bullington, his clerk, who upon his presentation was admitted and instituted in time of peace, in the time of the same King Edward, father etc., and by the death of this Alan the aforesaid church is now void. And from that Robert the right of presenting etc. descended in right of the aforesaid manor to this Robert as son and heir, who is now within age and in the wardship of the lord King, the which lord King that now is seized into his hand the aforesaid manor and advowson etc. by reason of wardship, because of the infancy of the aforesaid heir etc.; and he granted the wardship of the aforesaid manor to a certain Robert of Waceville to hold until the lawful age etc., the advowson of the aforesaid church being preserved in the King's hand; and because the same lord King is seised of the advowson of the same church in right of wardship, as is aforesaid, it appertaineth to the same lord King to present etc. to the aforesaid church, and the aforesaid Elizabeth doth unjustly impede the said lord King etc. And this he [Walter of Langley] is ready to aver on behalf of the lord King etc.

Note from the Record—continued.

Et Elizabetha per attornatum suum venit et defendit vim et Iniuriam quando etc. Et bene concedit quod predictus Walterus de Wassingle antecessor predicti heredis tenuit predictum manerium cum pertinenciis de predicto Henrico Regi auo domini Regis nunc vt de Corona etc. et quod predictus Edwardus Rex pater eiusdem domini Regis nunc post mortem ipsius Roberti filii Radulphi tenentis sui seisiuit manerium illud cum pertinenciis in manum suam racione minoris etatis ipsius Roberti et quod predictus Hunfridus cui idem dominus Rex commisit custodiam predicti manerii tenendam vsque ad etatem ipsius heredis ad eandem ecclesiam presentauit etc. et quod idem manerium post mortem ipsius Roberti filii Radulphi deuenit in seisina domini Regis nunc racione minoris etatis ipsius Roberti filii Radulphi set dicit quod aduocacio ecclesie predictae per hoc non est in seisina domini Regis nunc nec esse debet etc. quia dicit quod eadem aduocacio non est pertinens ad predictam manerium Immo est quoddam grossum per se quod non tenetur in capite de Rege etc. nec de aliquo alio per seruicium militare Immo de Abbate de Croyland per certum seruicium et in socagio etc. Dicit enim reuera quod ante tempus Regis Ricardi consanguinei domini Regis nunc quod est [ante] tempus memorie quidam Henricus tunc Abbas de Croyland fuit seisitus de aduocacione ecclesie predictae qui ad eandem ecclesiam presentauit quendam Hugonem de Bastone clericum suum qui ad presentacionem suam fuit admissus et institutus etc. ante tempus memorie supradictum. Et postea vacante predicta ecclesia etc. post tempus memorie idem Abbas ad eandem presentauit quendam Iohannem de Bastone clericum suum qui ad presentacionem suam fuit admissus et institutus tempore pacis tempore eiusdem Regis Ricardi etc. Et dicit quod idem Abbas postea eandem ecclesiam dedit cuidam Ricardo de Wassingle antecessori predicti heredis in escambium pro vno messuagio et vna virgata terre cum pertinenciis in Wassingle De quibus Abbas de Croyland est seisitus hiis diebus Tenendam predictam aduocacionem eidem Ricardo et heredibus suis de predicto Abbate et successoribus suis imperpetuum per seruicium vnus Rose per annum pro omni seruicio Et dicit quod tam idem Ricardus tempore suo quam heredes sui antecessores istius heredis nunc cuius heres ipse est hucusque tenuerunt predictam aduocacionem successiue de Abbatibus de Croyland pro predictum certum seruicium et non de progenitoribus domini Regis seu aliquo alio per seruicium militare etc. Et hoc pretendit verificare etc. Dicit ad hec quod ipsa est mater predicti heredis ad quam tanquam ad propinquiorem etc. cui predicta aduocacio non potest descendere in hac parte pertinet de predicta aduocacione ad commodum et vtilitatem ipsius heredis ordinare etc. Et ea racione ad ipsam Elizabetham nomine predicti heredis vt eius parens propinquior et non ad dominum Regem pertinet ad eandem ecclesiam presentare etc.

Note from the Record—continued.

And Elizabeth cometh by her attorney and denieth force and wrong when etc.; and she doth fully admit that the aforesaid Walter of Washingley, ancestor of the aforesaid heir, held the aforesaid manor with the appurtenances of the aforesaid Harry the King, grandfather of the lord King that now is, as of the Crown etc., and that the aforesaid Edward the King, father of the same King that now is, after the death of the said Robert, son of Ralph, his tenant, seized that manor with the appurtenances into his hand because of the infancy of the said Robert, and that the aforesaid Humphrey, to whom the same lord King granted the custody of the aforesaid manor to hold until the age of the said heir, presented to the same church etc., and that the same manor after the death of the said Robert, son of Ralph, passed into the seisin of the lord King that now is because of the infancy of the said Robert, son of Ralph; but she saith that the advowson of the aforesaid church is not for this cause in the seisin of the lord King that now is nor ought it to be etc., for she saith that the same advowson is not appurtenant to the aforesaid manor, but is, on the contrary, a certain gross of itself which is not held in chief of the King etc. nor of any other by knight's service, but, on the contrary, of the Abbot of Crowland by a certain service and in socage etc. For she saith that in truth before the time of King Richard, kinsman of the lord King that now is, which is [before] the time of memory, a certain Harry, at that time Abbot of Crowland, was seised of the advowson of the aforesaid church, and he presented to the same church a certain Hugh of Baston, his clerk, who, upon his presentation, was admitted and instituted etc. before the aforesaid time of memory. And afterwards the aforesaid church etc. becoming void within the time of memory, the same Abbot presented to the same church a certain John of Baston, his clerk, who, upon his presentation was admitted and instituted in time of peace, in the time of the same King Richard etc. And she saith that the same Abbot afterwards gave the same church to a certain Richard of Washingley, ancestor of the aforesaid heir, in exchange for a messuage and a virgate of land, with the appurtenances, in Washingley, of which the Abbot of Crowland is seised in these days, to hold the aforesaid advowson to the same Richard and his heirs of the aforesaid Abbot and his successors for ever by the service of a rose every year for all services. And she saith that both the same Richard in his time and his heirs, ancestors of the said present heir, who is the heir of Richard, have up to now held the aforesaid advowson in succession of the Abbots of Crowland by the aforesaid service certain, and not of the progenitors of the lord King or of any other by knight's service etc. And she doth offer to aver this etc. She saith further that she is the mother of the aforesaid heir to whom, as the next etc. to whom the aforesaid advowson cannot descend, it appertaineth in the present circumstances to take such order in respect of the aforesaid advowson as is for the advantage and benefit of the said heir etc. And for this reason it appertaineth to this same Elizabeth to present to the same church etc. on behalf of the aforesaid heir, as his next of kin, and not to the lord King.

Note from the Record—continued.

Et Willelmus qui sequitur etc. dicit quod predicta aduocacio non tenetur in socagio nec est grossa per se Immo pertinens ad predictum manerium quod est de antiquo dominico Corone et hoc satis liquere potest per inspeccionem libri de Domesday vbi dicit Ibi est ecclesia et presbiter Et petit quod habita inspeccione dicti libri procedatur in hac parte iuxta testimonium eiusdem quo ad ipsam aduocacionem tanquam pertinentem etc. Et dicit eciam quod licet predicta aduocacio fuisset modo separata a predicto manerio cum non sit Dominus Rex talem habet prerogatiuam in regno suo quod cum aliquis teneat de ipso domino Rege vt de Corona manerium seu aliud tenementum Idem dominus Rex post mortem huiusmodi tenentis sui per prerogatiuam suam seisire debet omnes terras et tenementa similiter et aduocaciones ipsius tenentis sui quascunque tam ipsa videlicet tenta in socagio quam alia tenta per seruicium militare de quocunque illa tenuerit et ea in manu sua retinere Et ad ecclesias si que vacare contigerint interim presentare quousque huiusmodi tenementa et aduocaciones secuta sunt extra seisinam domini Regis in Cancellaria etc. Et dicit quod post mortem predicti Roberti filii Radulphi qui tempore obitus sui adhuc fuit infra etatem manerio et aduocacione predictis in seisina Hunfridi ex concessione ipsius domini Regis patris etc. tunc existentibus iste dominus Rex nunc seisiuit tam ipsam aduocacionem vnde adhuc est in seisina quam predictum manerium ad quod eadem aduocacio pertinet per minorem etatem ipsius heredis nunc sicut predictum est vnde cum ex parte ipsius Elizabethe cognitum sit et concessum quod predictus Edwardus Rex pater etc. habuit custodiam predicti manerii cum pertinenciis post mortem predicti tenentis sui qui illud tenuit de ipso domino Rege vt de Corona Et quod predictus Hunfridus assignatus ipsius Regis ad eandem ecclesiam presentauit etc. continuando statum ipsius domini Regis in custodia predicta vsque obitum ipsius Roberti et iste dominus Rex post mortem eiusdem Roberti qui obiit infra etatem vt predictum est sit nunc in seisina de eadem aduocacione nomine custodie continueate de Rege in Regem per minorem etatem heredum predictorum successiue contingentem in forma predicta petit Iudicium pro domino Rege et breue Episcopo etc. maxime cum verificacio quam predicta Elizabetha pretendit super impertinencia aduocacionis a manerio vnde aliquod factum speciale non ostendit contra recordum libri predicti supponentis ipsam ecclesiam esse pertinentem non sit admittenda.

Et super hoc inspecto per Iusticiarios libro supradicto in eodem comperum est sub forma que sequitur. Terra taynorum Regis In Wassingley habet Chechelbert duas hydas et dimidiam ad Geldam terra iij. carucate Idem ipse tenet de Rege et habet ibi vnam carucatam et x. villanos cum

Note from the Record—*continued*.

And William who sueth etc. saith that the aforesaid advowson is not holden in socage, neither is it a gross of itself, but, on the contrary, is appurtenant to the aforesaid manor, which is of the ancient demesne of the Crown, and this doth plainly appear from an inspection of Domesday Book, where it saith : There is a church and priests.¹ And he asketh that after inspection had of the said Book the matter may be proceeded with in accordance with the testimony of the same as showing this advowson to be appurtenant etc. And he saith also that even though the aforesaid advowson were now severed from the aforesaid manor, as it is not, the lord King hath such a prerogative within his realm that if anyone hold of the same lord King as of his Crown a manor or other tenement, the same lord King, after the death of his tenant of this kind, is entitled by his prerogative to seize all the lands and tenements and also the advowsons of his same tenant, both those holden in socage and others holden by knight's service, of whomsoever he held them, and to keep them in his hand ; and to present to any church which may become void in the meantime until tenements and advowsons of this kind are sued out of the seisin of the lord King in the Chancery etc. And he saith that after the death of the aforesaid Robert, son of Ralph, who at the time of his death was still within age, the aforesaid manor and advowson being then in the seisin of Humphrey by the grant of the said lord King, father etc., this lord King that now is seized both that advowson, of which he is still in seisin, and the aforesaid manor to which the same advowson is appurtenant, by reason of the infancy of the present heir, as is aforesaid ; and since it is admitted and allowed on the part of the said Elizabeth that the aforesaid King Edward, father etc., had the wardship of the aforesaid manor with the appurtenances after the death of his aforesaid tenant, who held it of the same lord King as of the Crown, and that the aforesaid Humphrey, the assignee of the same King, presented to the same church etc., continuing the estate of the same lord King in the aforesaid wardship until the death of the said Robert, and as the same lord King since the death of the same Robert, who died within age, as is aforesaid, is now in seisin of the same advowson in the name of wardship which hath been continued from king to king by reason of the infancies of the aforesaid heirs following in succession after the manner aforesaid, he asketh judgment for the lord King and a writ to the Bishop etc. especially as the averment which the aforesaid Elizabeth doth offer as to the non-appurtenance of the advowson to the manor, in support of which she doth not show any special deed against the record of the aforesaid Book which supposeth that church to be appurtenant, cannot be received.

And upon this, the aforesaid Book having been inspected by the Justices, it is found that it is written therein as followeth : ' Land of the King's Thanes. In Washingley Chancelbert hath two hides and a half subject to geld. Land, four carucates. The same holdeth of the King and hath there one carucate and ten villeins with four ploughs. There is a church there

¹ Domesday says *presbiter* in the singular.

Note from the Record—continued.

iiij. carucis ibi ecclesia et presbiter et duodecim acre prati silua pastura vij. quarentene Longitudinis et decem quarentene et dimidia Latitudinis tempore Regis Edwardi et modo valet .x. solidos.

Et Elizabetha dicit quod predictus Robertus filius Radulphi quem dominus Rex obiisse dicit infra etatem diu antequam obiit fuit in seisinâ de hereditate sua tanquam plene etatis extra seisinâ ipsius Hunfridi habita et secuta unde cum idem Dominus Rex per continuacionem seisine etc. et presentacionem ipsius Hunfridi supradictam vna cum hoc quod dicit ipsum dominum Regem nunc fore in seisinâ etc. nec non racione prerogatiue sue etc. clamet presentare etc. Idem dominus Rex per aliquam continuacionem seisine Edwardi Regis patris sui seisinamue seu prerogatiuam quas allegat seu per aliquod recordum dicti libri huius diebus nullam habet racionem presentandi in hac parte quia dicit vt prius quod cum predicta aduocacio non teneatur de domino Rege in capite nec de alio per seruicium militare Immo de Abbate de Croyland a tanto tempore per predictum seruicium certum vt predictum est predictus Dominus Rex pater etc. ipsam aduocacionem licet fortassis de facto seisiuit seisure non debuit sicut nec potuit cum sit socagium etc. et sic per consequens presentacio ipsius Hunfridi ad eandem ecclesiam facta preoccupata fuit tempore minoris etatis predicti heredis per hoc forsân quod illi qui tunc fuerunt ipsius heredis amici vel eius parens propinquior fuerunt remissi et negligentes vel saltim in permittendo ipsum Hunfridum presentare consentientes Et ex quo ipsa Elizabetha que est mater predicti heredis in ista vacacione nunc sequitur hic in Curia domini Regis pro presentacione sua habenda nomine predicti heredis tanquam parens propinquior non intendit quod dominus Rex qui in seisinâ predictæ aduocacionis non existit nec esse potest sic nec debet racionibus predictis vilius pretextu presentacionis per predictum Hunfridum tantummodo habentem custodiam manerii etc. ex concessione domini Regis qui plusquam suum fuit concedere non debuit ad predictam ecclesiam eidem manerio in nullo pertinentem preoccupate sicut predictum est impediendo ipsam Elizabetham a presentacione sua in hac parte velit seu debeat ad eandem ecclesiam presentacionem clamare. Dicit eciam quod qualitercunque predictus liber testatur quod ibi est ecclesia sicut est et ecclesia illa tempore edicionis libri fuisset a casu pertinens etc. ex hoc non sequitur quod ipsa ecclesia sit nunc pertinens sicut tunc quia dicit adhuc sicut prius dixit quod aduocacio predicta ante tempus memorie deuenit in seisinâ predicti Abbatis de Croyland et hoc forsân per factum speciale seu alio modo per feoffamentum etc. quod factum licet ipsa Elizabetha penses se non habeat tamen ipsa verificacio quam pretendit super eo quod predicta aduocacio non est pertinens Immo grossa est et fuit a tempore predicto et

Note from the Record—continued.

and a priest; and twelve acres of meadow; woodland, pasture, seven quarentenes¹ in length and ten quarentenes and a half in width, in the time of King Edward, and is now worth ten shillings.'

And Elizabeth saith that the aforesaid Robert, son of Ralph, of whom the lord King saith that he died within age, was for a long time before he died in seisin of his heritage as one that was of full age, having sued it and had it from the seisin of the said Humphrey; and whereas the King doth claim to present etc. by reason of the continuance of the seisin etc. and the presentation aforesaid of the said Humphrey, and whereas also [William, who sueth for the King] saith further that the King is now in seisin by virtue of his prerogative etc., the same lord King hath to-day no right to present in this case by any continuance of the seisin of King Edward, his father, or of the seisin or prerogative which are alleged nor by any record of the said Book, for she, Elizabeth, saith as before that since the aforesaid advowson is not holden of the lord King in chief nor of any other by knight's service, but, on the contrary, of the Abbot of Crowland from so long a time back by the aforesaid service certain, as is aforesaid, the lord King, father etc., though he may, peradventure, have in fact seized the said advowson, was not entitled to seize it, nor could he, since it is socage etc.; and so, consequently, the presentation made by the said Humphrey to the same church was snapped during the infancy of the aforesaid heir, peradventure because they who were then the friends of the same heir or his next of kin were remiss and negligent or at least connived at the said Humphrey presenting; and because this same Elizabeth who is the mother of the aforesaid heir is now, at the time of this voidance, suing here in the Court of the lord King to have her presentation in the name of the aforesaid heir, as his next of kin, she doth not think that the lord King, who for the aforesaid reasons is not nor can be nor is entitled to be in seisin of the aforesaid advowson on the ground of any presentation by the aforesaid Humphrey, who had the wardship of the manor etc. only by the grant of the lord King, who was not entitled to grant more than he had, to the aforesaid church that is in no way appurtenant to the same manor, snapped as is aforesaid will desire or ought in these circumstances to claim the presentation to the same church by hindering the same Elizabeth from her presentation. For she saith that though the aforesaid Book do witness that there was a church there, as there is, and though peradventure that church may at the time of the promulgation of the Book have been appurtenant etc., it doth not follow that that same church is now appurtenant as it then was, for she saith still, as she said before, that the aforesaid advowson passed before the time of memory into the seisin of the aforesaid Abbot of Crowland, and so passed peradventure by a special deed or by feoffment in some other manner; and though the same Elizabeth cannot produce that deed, yet the averment which she doth offer to the effect that the aforesaid advowson is not appurtenant, but is, on the contrary, a gross and hath been one from the time aforesaid, supported by the fact of

¹ A quarentene was forty perches.

Note from the Record—continued.

per certum seruicium tenta sicut predictum est vna cum presentacionibus ipsius Abbatis supradictis et escambio predicto vnde Abbas de Croyland nunc est seisitus pro aduocacione predicta quod quidem escambium equiualeret factum speciale in suo casu si predicta aduocacio uersus ipsum heredem fuisset petita eidem Elizabethhe sufficere debet pro presentacione sua habenda in forma predicta maxime cum ipsa sit premissa omnia pro statu suo in hac parte manutenendo verificare parata etc.

Et Willelmus qui sequitur etc. dicit vt prius quod cum in hoc placito satis est clarum quod predictus dominus Edwardus Rex pater etc. tempore suo fuit in seisina de predicto manerio cum pertinenciis nomine custodie cuius predictus Hunfridus tunc assignatus existens presentauit etc. Et postmodum non sit deditum quin dominus Rex nunc nomine custodie sit de eodem manerio seisitus per quod ex parte ipsius Elizabethhe nichil restat ambiguum nisi quo ad pertinenciam predictae aduocacionis quam pertinenciam predictus liber de Domesday affirmat et sufficienter testatur petit Iudicium pro domino Rege et breue Episcopo etc. super recordo libri predicti Et Elizabetha quesita per Iusticiarios si quod specialitatis habeat per que [sic] liquere possit Curie de disiunctione vel separacione predictae aduocacionis a manerio ex quo dictus liber ipsam facit pertinentem nichil aliud ostendit nisi pretendendo verificacionem quam prius pretendit et quam dicit sibi sufficere debere etc. Et petit Iudicium etc. Et quia satis liquet per Recordum libri predicti quod aduocacio predicta pertinens est ad predictum manerium propter quod verificacio quam predicta Elizabetha pretendit super impertinencia ipsius aduocacionis a manerio non est admittenda contra idem Recordum procedendum est ad Iudicium in hoc casu pro ipso domino Rege etc. Et consideratum est quod idem Dominus Rex recuperet presentacionem suam ad predictam ecclesiam ratione custodie etc. Et habeat breue Episcopo Lincolnensi quod non obstante reclamacione ipsius Elizabethhe ad presentacionem domini Regis ad predictam ecclesiam idoneam personam admittat. Et Elizabetha in misericordia etc.

30. HEREFORD v. THE PRIOR OF NEWNHAM.¹I.²

Quare impedit ou fyn fut mys en barre.

Roger de Horess porta le quare impedit vers le Priour de Newenham et dit qa tort luy destourba etc. a leglise de Pristling qe voide est etc.

¹ Reported by *D* and *H*. Names of the parties from the Plea Roll. ² [Text of (I) from *D*

Note from the Record—continued.

the aforesaid presentations by the said Abbot and the aforesaid exchange, of which land so taken in exchange for the aforesaid advowson the Abbot of Crowland is now seised, the fact of which exchange would be equivalent in the circumstances to a special deed if the aforesaid advowson were being claimed against the said heir, ought to be sufficient to enable the same Elizabeth to have the presentation after the aforesaid manner, especially since she is now ready to aver etc. and to maintain, in proof of her estate, all the premises.

And William who sueth etc. saith as before that since it is sufficiently clear in this plea that the aforesaid lord Edward the King, father etc., was in his time in seisin of the aforesaid manor, with the appurtenances, in the name of wardship, and that the aforesaid Humphrey, as his assignee at that time, did present etc., and since it is not now denied that the lord King that now is is seised of the same manor in the name of wardship, naught, therefore, of what this same Elizabeth hath asserted remaineth contested save only the appurtenance of the aforesaid advowson, which appurtenance the aforesaid Domesday Book doth affirm and sufficiently witness, he asketh judgment for the lord King and a writ to the Bishop etc. upon the record of the said Book. And Elizabeth, upon being asked by the Justices whether she hath any specialty which can prove to the Court the deparcement or separation of the aforesaid advowson from the manor, to which the said Book sheweth it to be appurtenant, sheweth naught further, but offereth only the averment which she did offer before and which, she said, ought to be sufficient for her etc. And she asketh judgment etc. And because it doth sufficiently appear by the record of the aforesaid Book that the aforesaid advowson is appurtenant to the aforesaid manor, and therefore the averment which the aforesaid Elizabeth doth offer as to the non-appurtenance of the same advowson to the manor is not admissible against the same record, judgment for the King must, in the circumstances, be proceeded with. And it is considered that the lord King recover his presentation to the aforesaid church in right of wardship etc. And he is to have a writ to the Bishop of Lincoln directing him, notwithstanding the claim of the said Elizabeth, to admit a fit person to the aforesaid church upon the presentation of the lord King. And Elizabeth in mercy etc.

30. HEREFORD v. THE PRIOR OF NEWNHAM.

I.

Quare impedit, where a fine was tendered in bar.

Roger of Hereford¹ brought the *quare impedit* against the Prior of Newnham and said that the Prior wrongfully disturbed him etc. [in presenting] to the church of Wrestlingworth¹ which is void etc.

¹ Corrected from the Record.

par la resoun qe vne [sic] Imbert derforde et Cecile sa femme furent seisi del auowesoun com del dreit Cecile en temps etc. et presenterent vn son Clerk Symone de Rysby etc. par qi mort etc. de Cecile descenda le dreit del auowesoun etc. a R. com a fitz de R. a Roger com a fitz et issi apent a luy etc. il le destourbe etc.

Denom. Le Priour vous dit qe a luy apende a presenter et nous¹ [sic] pas a vous et par la resoun qe auant ces hures mesme cesti Imbert et Cecile sa femme porterent vne assise de dreyn presentement uers H. nostre predecessour en tens le Roy Henri fitz le Roi Iohan lan de son reigne .xviij. deuant Sire Esteuene de Segraue et ceo compaignouns Iustices etc. ou mesme ceux Imbert et Cecile releesserent et quiteclamerent a ly et a ces successeurs a touz iours tut le dreit qil auent en lauowesoun etc. pus apres la eglise se voida par qei le Pape prouent a mesme la eglise et fit induccioun de son clerk Rauf par noun auxi com en le dreit le priour par qei nous demandoms iugement desicom nous auoms mustre fyn qe testmoigne qe vostre Auncestre ad relese et quiteclame etc. et sur ceo lauoms moustre vn possessioun si vous poez dire qe a vous apent a presenter.

Scrop. Fetes vostre excepcioun pleyne et dites par qi mort la eglise se voida quaunt le Pape se fit induccioun.

Denom. Ieo vous mustre asset dauer bref a lenesqe sur reles et quiteclame et possessioun de presentement.

Berr. Il vous ad asset dit pur auer bref etc. si vous ne diez autre chose.

Scrop. Nous vous dioms qe pus lan de Reigne Roi Henri xliij. [sic] pur x. auns apres la eglise se voida ou mesme ceux Imbert et Cecile presenterent a cel temps vn son clerk Symone par qi mort etc. et demaundoms iugement si par cele quiteclame nous puissetz ouster de cel bref de possessioun de si com nous moustre [sic] la possessioun nostre auncestre pus la fyn.

Denom. Donqe conisiet vous la fyn.

Scrop. Nous la dedioms pas.

Denom. Ore demaundoms nous iugement de si com vous auez conu la fyn qe esteynt vostre dreit si pous [sic] puisset dire qe

¹ Rectius non.

[and the right to present to which church belongeth to him, Roger] by reason that one Imbert of Hereford and Cecily, his wife, were seised of the advowson as of the right of Cecily in time etc. and presented one Simon of Risleley, their clerk etc., by whose death etc. The right in the advowson etc. descended from Cecily to R. as son and heir; from R. to Roger as son, and so it belongeth to him etc. The Prior disturbeth him etc.

Denham. The Prior telleth you that it belongeth to him to present and not to you, and for this reason, that in time past these same Imbert and Cecily, his wife, brought an assize of *darein presentement* against H., our predecessor, in the time of King Harry, son of King John, in the seventeenth year of his reign, before Sir Stephen of Seagrave and his companions, Justices etc., when these same Imbert and Cecily released and quitclaimed to him and to his successors for all time all the right which they had in the advowson etc. Then, after that time, the church became void, and thereupon the Pope made provision to the same church and inducted therein his clerk, Ralph by name, as of the right of the Prior; and therefore, seeing that we have shown a fine which witnesseth that your ancestor hath released and quitclaimed etc. and have further shown a possession [of the right to present], we ask judgment whether you are entitled to say that it belongeth to you to present.

Scrope. Make your exception complete and say by reason of whose death the church was void when the Pope inducted to it.

Denham. I show you enough in the release and quitclaim and the possession of the presentation to entitle me to have a writ to the Bishop.

BEREFORD C.J. He hath said enough to have a writ etc. if you say naught more.

Scrope. We tell you that ten years after the forty-third¹ year of King Harry the church became void and these same Imbert and Cecily did at that time present one Simon, their clerk, by whose death etc.; and we ask judgment whether you can bar us from this possessory writ by that quitclaim, seeing that we have shown possession by our ancestor after the fine.

Denham. Do you, then, admit the fine?

Scrope. We do not deny it.

Denham. Now, since you have admitted the fine which extinguisheth your right, we ask judgment whether you can say that

¹ The manuscript is corrupt here. According to the Plea Roll and the fine itself the fine was levied in 16

Henry III. See the Notes from the Record, pp. 194-196 below.

vostre auncestre presenta etc. saunz moustre coment vostre auncestre aynt.

Scrop. Coment qil presenta auxicom en le dreit Cecile ou noun de pus qe nous vous mustroms estre hors de possessioun par lour presentement vous nauez autre recouerie forsqe par bref de dreit si vous ne seiēt en cas de statut par qy etc.

Herle. De pus qe le dreit fut esteynt par le quiteclame etc. et sil presenta pus la fyn ceo serreit plus tost dit vn occupacioun qe vn presentement.

Berr. Respoundez sil presenta pus la fyn ou noun.

Denom. Il ne presenta pas pus la fyn prest etc.

Et alii econtra.

Nota qe possessioun subsequent voide reles precedent.

II.¹

Roger de Hertford porta son quare impedit uers le priour de Newenham et dit qe meyme le priour luy destourba a tort a presenter couenable persone a la eglise de berkestede qe voide est et a sa doneisun apent par la resoun qe vn ymber de Hertford son auncestre fut seisi de meyme la auowesoun en tens de pees en tens le roy Henri etc. et en meyme le tens presenta vn son clerk etc. qy fut resceu etc. de ymber descendit le dreyt a simond com a fiz et heyr de simond a Roger qe ore demaunde com a fiz et heyr issi apent etc. et a ses damages etc.

Denom. Sire nous vous dioms qe la ou Roger porte ceo quare impedit et counte de la seisine ymber descendaunt a simon et puy a luy le priour vous dit qe en le tens le roy Henri sei leua vne fine lan .xvj. de son regne deuaunt sir esteuen de segraue et ses compaygnons iustices du baunk a tiel tens a la quinzeyne de seynt Hillarie entre cely ymbre de qy seisine il ad counte et eccile sa feme de autre [*sic*] parte pleygnaunz et hern le priour de Newenham predecessour meyme cesti priour sur vn dreyt presentement qe meymes ceux inber [*sic*] et eccile auoient porte uers le auantdit priour de meyme la eglise ou ils relessaient et quitelannaient tut le dreyt de eux et lur heyres a prior et a ses successours a touz iours apres quele fine leua a la procheyn noydaunce apres la fine leue le apostoil puruent a meym cest eglise et fit induccioun

¹ Text of (II) from *H.*

your ancestor presented etc. without showing how your ancestor was entitled to do so.

Serape. Whether they presented as of the right of Cecily or not [mattereth not], for since we have shown that, by the fact of their presenting, you were out of possession, you can have no other recovery than by a writ of right, unless you come within the provisions of the statute¹; wherefore etc.

Herle. Since the right to present was extinguished by the quitclaim etc., if they did present after the fine, that would be rather a usurpation than a presentation.

BEREFORD C.J. Answer whether they presented after the fine or did not.

Denham. They did not present after the fine, ready etc.

And the other side joined issue.

Note that a later possession voideth an earlier release.

II.

Roger of Hereford² brought his *quare impedit* against the Prior of Newnham and said that the same Prior wrongfully disturbed him in presenting a fit person to the church of Wrestlingworth² which is void, and is in his gift because one Imber of Hereford, his ancestor, was seised of the same advowson in time of peace, in the time of the King Harry etc. and at the same time presented one etc., his clerk, who was received etc. The right descended from Imber to Simon as son and heir; from Simon to Roger, who now claimeth, as son and heir. It therefore belongeth etc. and to his damage etc.

Denham. Sir, we tell you that whereas Roger bringeth this *quare impedit* and counteth of the seisin of Imber descending to Simon and afterwards to himself the Prior telleth you that in the time of King Harry, in the sixteenth year of his reign, a fine was levied before Sir Stephen of Seagrave and his companions, Justices of the Bench at that time, on the quindene of St. Hilary, between that Imber of whose seisin the plaintiff hath counted and Cecily, his wife, of the one part, complainants. and Herm, the Prior of Newnham, predecessor of this same Prior, under a writ of latest presentation to the same church which these same Imber and Cecily had brought against the aforesaid Prior, whereby they released and quitclaimed all right for themselves and their heirs to the Prior and to his successors for ever. After the levying of that fine, on the voidance next after the levying of the fine, the Pope made provision for this same church, and caused one Ralph the

¹ Statute of Westminster II. cap. v.

² Corrected from the Record.

a vn raulf le rouse com du dreyt le prior par qy mort la eglise est ore voide issi apent il al prior a presenter et nient a roger.

Scrop. La ou vous ditez qe cest fine leua nous vous dioms qe dis aunz apres la fine leue simond auncestre roger presenta a meyme la eglise vn simond de seranigham et demaundoms iugement si destourbaunce par resoun de ceo fine poez mettre.

Herel. Veez cy fine qe est de recorde par quel fine tut le saunk ymber fut estraunge iugement si il ne poet moustrer title de dreyt coment ceo presentement de puyne tens luy apendait si pur ceo presentement deinue estre eide.

Scrop. Title ne frooms pas car en cas ou home poait happer en presentement deuaunt statut lautre a qy le dreyt fut fut chace a son bref de dreyt qar il nauoit altre reconerer.

Denom enparla et reuint et dit qe il ne presenta point puy la fine et alii eontra.

Notes from the Record.

I.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 314, Bedfordshire.

Prior de Newhenham summonitus fuit ad respondendum Rogero de Hereford de placito quod permittat ipsum presentare idoneam personam ad ecclesiam de Wrestlyngworthe que vacat et ad suam spectat donacionem etc. Et vnde Idem Rogerus per attornatum suum dicit quod quidam Inbertus de Hereford et Cecilia vxor eius aliquando fuerunt in seisinâ de aduocatione ecclesie predictæ vt de Inre ipsius Cecilie tempore pacis tempore Regis Henrici aui domini Regis nunc qui ad eandem ecclesiam presentauit quendam Simonem de Rislec clericum suum qui ad presentationem suam fuit admissus et institutus tempore pacis tempore eiusdem Regis Henrici etc. per cuius mortem predicta ecclesia modo vacat. Et de ipsa Cecilia descendit Ius presentandi etc. cuidam Roberto vt filio et heredi etc. Et de ipso Roberto etc. isti Rogero qui nunc etc. vt filio et heredi Et ea ratione pertinet ad ipsum Rogerum ad predictam ecclesiam presentare Predictus Prior ipsum iniuste impedit vnde dicit quod deterioratus est

Rouse to be inducted as of the right of the Prior, and by his death the church is now void. Therefore it belongeth to the Prior to present and not to Roger.

Scrope. Whereas you say that this fine was levied, we tell you that ten years after the levying of the fine Simon, ancestor of Roger, presented to this same church one Simon of Scrayingham; and we ask judgment if you are entitled by this fine to disturb us.

Herle. See here the fine, which is of record, by which fine all the blood of Imber was ousted [from any right in the advowson]. Judgment whether he ought to get any help in the matter of this presentation if he cannot show by a legal title of a later date [than that of the fine] how this presentation belongeth to him.

Scrope. We shall make no title, for in the case where anyone was able to snap a presentation, the one to whom the right belonged was driven, before the statute,¹ to his writ of right, for he had no other recovery [but it is not so now, and therefore we need not prove our title].²

Denham imparled and came back and said that [the ancestor of Roger] did not present after the levying of the fine; and thereon issue was joined.

Notes from the Record.

I.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 314. Bedfordshire.

The Prior of Newnham was summoned to answer Roger of Hereford of a plea that he permit him to present a fit person to the church of Wrestlingworth³ which is void and in his gift. And thereof the same Roger, by his attorney, saith that a certain Imbert of Hereford and Cecily, his wife, were at one time in seisin of the advowson of the aforesaid church, as of the right of the same Cecily, in time of peace, in the time of King Harry, grandfather of the lord King that now is, who presented to the same church a certain Simon of Riseley, his clerk, who, on his presentation, was admitted and instituted in time of peace, in the time of the same King Harry etc., and by his death the aforesaid church is now void. And the right to present etc. descended from that same Cecily to a certain Robert as son and heir etc. And from that Robert etc. to this Roger who now etc. as son and heir. And for these reasons it belongeth to this same Roger to present to the aforesaid church. The aforesaid Prior doth unjustly impede him, whereby he saith

¹ Statute of Westminster II. cap. v.

² The point of Scrope's speech is not plain. The text is probably corrupt, but the words added in the translation in square brackets, though wholly con-

jectural, may possibly throw light on Scrope's meaning.

³ Wrestlingworth is near Sandy in Bedfordshire.

Notes from the Record—continued.

et dampnum habet ad valenciam centum librarum Et inde producit sectam etc.

Et Prior per attornatum suum venit Et defendit vim et iniuriam quando etc. Et dicit quod ad ipsum et non ad predictum Rogerum pertinet ad predictam ecclesiam presentare etc. Dicit enim quod alias in Curia Regis Henrici aui domini Regis nunc a die sancti Hillarii in tres septimanas anno regni sui sexto decimo coram Stephano de Segrave et sociis suis Iusticiariis hic leuavit quidam finis inter predictos Imbertum et Ceciliam vxorem eius querentes et quendam Herueum tunc Priorem de Neuham predecessorem istius Prioris deforcientem de aduocacione ecclesie predictie vnde assisa vltime presentacionis summonita fuit inter eos etc. scilicet quod predicti Imbertus et Cecilia remiserunt et quietum clamauerunt de se et heredibus ipsius Cecilie predicto Priori et successoribus suis et ecclesie sue de Neuham totum ius et clameum quod habuit [*sic*] in predicta aduocacione imperpetuum etc. Et profert partem predictie finis que hoc testatur etc. Et dicit quod postmodum vacante predicta ecclesia Dominus Papa tunc ex plenitudine potestatis sue prouidit ipsi ecclesie de quodam Magistro Radulpho le Rus quem profecit in rectorem vt in Iure ipsius Prioris etc. per cuius mortem predicta ecclesia modo vacat etc. Et ex quo predicta Cecilia antecessor ipsius Rogeri cuius heres ipse est simul cum predicto viro suo se dimisit de toto Iure suo per predictum finem etc. petit Iudicium si predictus Rogerus per medium ipsius Cecilie in presentacione eiusdem ecclesie ad presens quicquam clamare possit etc.

Et Rogerus dicit quod diu post predictum finem leuatum predicti Imbertus et Cecilia vt de Iure ipsius Cecilie ad eandem ecclesiam presentauit predictum Simonem de Risle clericum suum qui ad presentacionem suam fuit admissus et institutus sicut predictum est et per cuius mortem predicta ecclesia modo vacat etc. Et petit Iudicium etc.

Et Prior dicit quod predictus Simon ad aliquam presentacionem predictorum Imberti et Cecilie factam ad predictam ecclesiam post predictum finem nunquam fuit admissus et institutus etc. sicut predictus Rogerus dicit Et de hoc ponit se super patriam Et Rogerus similiter Ideo preceptum est vicecomiti quod venire faciat hic in Octabis sancti Hillarii xij. etc. per quos etc. Et qui nec etc. Quia tamen etc. Postea in Octabis Purificacionis beate Marie anno supradicto veniunt partes predictie per attornatos suos Et similiter Iuratores de consensu parcium electi Qui dicunt super sacramentum suum quod predictus Simon de Rysle ad presentacionem predictorum Imberti et Cecilie nunquam fuit admissus et institutus ad ecclesiam predictam quia dicunt quod predictus Simon fuit admissus et institutus in eadem ad presentacionem cuiusdam Elie Tailleboys patris predictie Cecilie ante predictum

Notes from the Record—continued.

that he hath suffered loss and hath damage to the amount of a hundred pounds. And thereof he produceth suit etc.

And the Prior cometh by his attorney and denieth force and injury when etc. And he saith that to himself and not to the aforesaid Roger it doth appertain to present to the aforesaid church etc. For he saith that at other time in the Court of King Harry, grandfather of the lord King that now is, three weeks after St. Hilary's Day in the sixteenth year of his reign, before Stephen of Seagrave and his companions, Justices here, a certain fine was levied between the aforesaid Imbert and Cecily, his wife, complainants, and a certain Hervey,¹ then Prior of Newnham, predecessor of this Prior, deforcient, of the advowson of the aforesaid church, whereof an assize of last presentation was summoned between them, to wit, that the aforesaid Imbert and Cecily released and quitclaimed for themselves and for the heirs of the same Cecily to the aforesaid Prior and to his successors and to his church of Newnham all the right and claim which they had in the aforesaid advowson for ever etc. And he proffereth part of the aforesaid fine which doth witness this etc. And he saith that shortly afterwards, the aforesaid church being void, the lord Pope that then was did out of the plenitude of his power make provision for the same church to a certain Master Ralph the Rus whom he made rector as of the right of the said Prior etc., and by his death the aforesaid church is now void etc. And because the aforesaid Cecily, ancestor of the said Roger, whose heir Roger is, together with her aforesaid husband, divested themselves by the aforesaid fine etc. of all their right, the Prior asketh judgment whether the aforesaid Roger can at present claim aught in the presentation to the same church through the said Cecily etc.

And Roger saith that a long time after the aforesaid fine was levied the aforesaid Imbert and Cecily, as of the right of the same Cecily, presented to the same church the aforesaid Simon of Riseley, their clerk, who, on their presentation, was admitted and instituted as is aforesaid, by whose death the aforesaid church is now void etc. And he asketh judgment etc.

And the Prior saith that the aforesaid Simon was never admitted and instituted etc. on any presentation made by the aforesaid Imbert and Cecily to the aforesaid church after the levying of the aforesaid fine, as the aforesaid Roger doth say. And of this he putteth himself on the country. And Roger doth the like. So the Sheriff is ordered to make come here in the octaves of St. Hilary twelve etc. by whom etc., who neither etc., because both etc. Afterwards in the octaves of the Purification of Blessed Mary in the year aforesaid, the aforesaid parties come by their attorneys, and also jurors chosen by the consent of the parties, who upon their oath do say that the aforesaid Simon of Riseley was never admitted and instituted to the aforesaid church on the presentation of the aforesaid Imbert and Cecily, because they say that the aforesaid Simon was admitted and instituted to the same on the presentation of a certain Ellis Tailleboys, father of the aforesaid Cecily, before the aforesaid fine was levied. Therefore it is con-

¹ Prior Hervey is unknown to Dugdale.

Notes from the Record—continued.

finem leuatum Ideo consideratum est quod predictus Prior recuperet presentacionem uersus predictum Rogerum ad predictam ecclesiam Et habeat breue Episcopo Lincolnensi quod non obstante reclamacione predicti Rogeri ad presentacionem predicti Prioris ad predictam ecclesiam idoneam personam admittat etc. Et similiter predictus Prior recuperet uersus eum dampna sua scilicet valorem medietatis ecclesie per annum eo quod tempus semestre nondum elapsum est que taxantur per Iuratores ad quinquaginta solidos Et Rogerus in misericordia etc.

Dampna L. s. medietas Clericis.

II.

Feet of Fines, 13-16 Henry III., File 15, Case 1, No. 5, Bedfordshire.

Hec est finalis concordia facta in Curia domini regis apud Westmonasterium a die sancti Hilarii in tres septimanas anno regni regis Henrici filii regis Iohannis sextodecimo Coram Stephano de Segraue Roberto de Lexintone Willelmo de Eboraco Magistro Roberto de Soperdel Radulpo de Norwico et Ada filio Willelmi iusticiariis et aliis domini regis fidelibus tunc ibi presentibus Inter Imbertum de Hereford et Ceciliam vxorem eius querentes per Iohannem cotum positum loco ipsius Cecilie ad lucrandum uel perdendum et Herueum Priorem de Newham deforcientem de aduocacione ecclesie de Wraxlingwurthe vnde assisa ultime presentacionis summonita fuit inter eos in eadem curia Scilicet quod predicti Imbertus et Cecilia remiserunt et quietum clamauerunt de se et heredibus ipsius Cecilie predicto Priori et successoribus suis et ecclesie sue de Newham totum ius et clameum quod habuerunt in predicta aduocacione imperpetuum Et idem Prior recepit predictos Imbertum et Ceciliam et heredes eorum in singulis beneficiis et oracionibus que decetero fient in ecclesia sua de Neuham.

On the dorse :—Et Henricus de Braykrot et Cristiana vxor eius apponunt clameum suum.

31. ANON.¹

Quare impedit.

Quere la ou vn maner est deueni en ma main a qei vn auouesoun est apendaunt com eschete et leglise se voide esteaunt le maner en ma main pus ieo su disseisi du maner le disseisor me destourbe ieo port mouu quare impedit si ieo dei recouerir etc.

Toud. dit qen ceo cas il i anoit vne assise de nouele disseisine pendaunt du manour et allegea meschief sil ne recouereit qar par le

¹ Reported by Z.

quare impedit si le temps seit passe il recouereit ses damages a la value de leglise de ij. aunz et si ne fra il pas par assise etc.

Quere iudicium in hoc casu.

32. SNETTERTON v. THE PRIOR OF CASTLEACRE.¹

I.²

Thomas de Sincyst porta le replegiare vers vn priour etc. et se pleynt qe atort auoit pris ces auers.

Denom. La ou il se pleynt de ces auers nomement de vij. vaches v. genies vij. bouetts et vn tor en droit de vij. vaches [ij] morrurent par lor defaute et ij. genies etc. nous auowoms la prise etc. pur la resoun qe vn G. de N. tynt en ascun temps vn mes et vn carue de terre de vn I. predecessour cesti priour par homage feaute et par les seruices de xxx.s. par an des queux seruices il fut seisi par my la etc. quel G. enfeffa mesme cesti T. par statut a tenir de chif seignour de fee T. se attourna a cesti priour de sa fealte et pur les xxx.s. areres de .ij. aunz etc. il auowe etc. sur T. com sur etc. deynz son fee.

Bacoun gagy la deliuraunce.

Denom. En droit de vij. vaches et ij. genies vij. bouetts vn tor nous gagoms etc. ³qe vous pristez vij. vaches qe furent enpreceus [sic] iour de la prise etc. et deux foz pus vnt pris veles et prioms qe vous gagez la deliuraunce de xv. vels.⁴

Denom. Luy ne me chacera pas a gager etc. des autres bestes qe vous nestes pleynt Dautrepart ceo cherra en damages.

Berr. Choisissez fere la deliuraunce ou respoudre.

Denom. Qe les vaches ne velerount en nostre garde qe deux vels prest etc. et de ceo gaioms etc.

Scrop. Qil envelerount caunz etc. et la ou vous auez auowe en tel leu etc. hors de vostre fee etc.

Idco preceptum vicecomiti etc.

¹ Reported by *D.*, *E.* and *M.* Names of the parties from the Plea Roll. ² Text of (I) from *D.* ³⁻⁴ This is clearly no part of Denham's speech, and must come from the other side, from Scrope, probably. Something has gone wrong with the text.

of presentation] by the *quare impedit*, then, even though the time [within which a presentation ought to be made] had elapsed, he would still recover damages to the amount of two years' value of the church, which he would not do by the assize etc.

Quere the judgment in these circumstances.

32. SNETTERTON v. THE PRIOR OF CASTLEACRE.

I.

Thomas of Snetterton¹ brought the writ of replevin against a Prior etc. and complained that he had wrongfully taken his beasts etc.

Denham. Whereas his complaint is of his beasts, to wit, of seven cows, five heifers, seven steers and a bull, [we say that two] of the seven cows died through his own fault, and three heifers etc. We avow the taking on the ground that one G. of N. once held a messuage and a carucate of land of one J., predecessor of this Prior, by homage, fealty and by the services of thirty shillings a year, of which services he was seised by etc.; and that G. enfeofed this same Thomas under the statute² to hold of the chief lord of the fee. Thomas attorned himself of his fealty to this Prior; and for the thirty shillings in arrear for three years etc. the Prior avoweth etc. on Thomas as on etc., within his fee.

Bacon waged deliverance.

Denham. We wage etc. in respect of seven³ cows and three heifers, seven steers [and] a bull.

[*Stonor.*⁴] You took seven cows that were in calf on the day of the taking etc. and they have calved twice since then, and we pray that you shall wage deliverance of fifteen calves.

Denham. The law will not make us wage etc. of other beasts than those named in your plaint; and, besides, that is a matter for damages.

BEREFORD C.J. Say either that you will make deliverance or show cause why you should not.

Denham. Ready etc. that the cows calved but two calves while they were in our custody, and of these we wage etc.

Serape. That they calved fifteen, [ready] etc.; and whereas you have avowed in a certain place etc. [we say that it was] outside your fee etc.

So the Sheriff is ordered etc.

¹ Corrected from the Record.

² Statute of Westminster III. (Quia emptores)

³ This number is wrong. Two of the seven cows were dead.

⁴ See text and footnote thereon.

II.¹

Replegiare de viij vaches enpreignts ou deliuraunce fut gage de .v. veales.

Vne femme se pleynt del Priour de Castlare qe atort prist ses auers nomement .viij. vaches .iiij. genices et vn tor certain iour et an etc.

Denom. Nous auowoms la prise etc. quant a .vj. vaches .iiij. genices et vn Tor par le resoun qe la femme tynt de ly etc. par certeynz seruices etc.

Scrop. Vous estes seisi hue ceo iour de memes les bestes gage la deliuraunce de viij. de veals les queux vous nous detenez.

Denom. Vous nestes mie de veal pris [sic] coment donqe etc. del hure qe nous ne les primes poynt.

Scrop. Il prist les viij. vaches .ij. aunz passez qe furent adonqe enpreintes et vealerent pus chescune vache ij. veales qe amountera xvj. veales et prions de ceux la deliuraunce.

Denom. De .v. veales auoms nous et de ceo gaioms la deliuraunce et qe nient plus nauoms prest etc.

Et alii econtra.

Scrop. Il nous ad detenue nos bestes .ij. aunz etc.

Denom. Ceo fut vostre defaute demene qe vous ne vodrez la suyte faire prest [etc.].

Et alii econtra.

III.²

Qe la ou vn replegiare fu porte et la partie counta de vne torcenouse prise des vaches et dist qil fu seisi et pria qil gagast deliuraunce des vaches et issi fist et pus dist il qe les vaches pus la prise auoient en xvj. veles des quex il fu seisi et pria qil gagast la deliuraunce des vels et *Denom* dist qil nauoit mye counte de prise des vels par qey il dist qil ne denoit mye gager la deliuraunce et hoc non obstante fu chace a respoundre a les vels et en dreit des deus vels il gaga la deliuraunce et as altres si dist il qil ny auoit nient plus des vels etc.

¹ Text of (II) from *M*.

² Text of (III) from *E* in which it runs on continuously from the end of Version III. of Case 26 above, *Corbet v. The Prior of Kirkham* (p. 148), without the smallest break or the use of a capital letter to show that another case is being commenced.

II.

Replevin, where eight cows in calf were seized and deliverance of five calves was waged.

A woman complained of the Prior of Castleacre that he wrongfully took her beasts, to wit, eight cows, four heifers and a bull on a certain day and year etc.

Denham. We avow the taking etc. of six cows, four heifers and a bull because the woman held of the Prior by certain services etc.

Scrope. You are still seized to-day of these same beasts. Wage the deliverance of eight calves which you detain from us.

Denham. You are not complaining of the taking of calves¹; how then etc. since we did not take them?

Scrope. He took the eight cows two years ago, and they were then in calf, and afterwards they calved and each cow has had two calves, which maketh sixteen calves in all; and we pray deliverance of these.

Denham. We have five calves and of them we wage deliverance; and that we have no more, ready etc.

And issue was joined.

Scrope. He hath detained our beasts two years etc.

Denham. That was your own fault, for you would not make your suit, ready etc.

And issue was joined.

III.

When a writ of replevin was brought and the plaintiff counted of a wrongful seizure of cows and said that the defendant was seized of them and prayed that he might wage deliverance of them, and it was so done, and afterwards said that the cows had had sixteen calves since the seizure, of which the defendant was seized, and prayed that the defendant should wage deliverance of the calves, *Denham* said that the plaintiff had said naught in his count of any seizure of calves, and said that the defendant, consequently, ought not to wage the deliverance; but, notwithstanding this, the defendant was made to answer as to the calves; and he waged the deliverance of two calves, and, as to the others, said that there had not been more calves etc.

¹ The text is corrupt, but the translation given above probably gives *Denham's* meaning.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207). r. 354d., Norfolk.

Prior de Castelaere in misericordia pro pluribus defaultis etc.

Idem Prior summonitus fuit ad respondendum Thome de Snyterton de placito quare cepit aueria ipsius Thome et ea iniuste detinuit contra vadium et plegios etc. Et vnde Idem Thomas per attornatum suum queritur quod predictus Prior die Iouis proxima ante festum sancti Iohannis ante portam latinam anno regni Domini Regis sexto in villa de Cogham beate Marie in quodam loco qui vocatur Dounescroft cepit octo vaccas quinque Iueneas tres bouiculos et vnum taurum ipsius Thome et ea adhuc iniuste detinet contra vadium etc. quarum quidam vaccarum quelibet bis vitulauit in parco ipsius Prioris etc. vnde dicit quod deterioratus est et dampnum habet ad valenciam viginti librarum Et inde producit sectam etc. Et petit quod vadiat ei deliberacionem predictorum aueriarum et vitulorum etc.

Et Prior per attornatum suum venit Et dicit quod ipse non cepit de predictis aueriis nisi sex vaccas quarum due interierunt in parco ipsius Prioris per defectum alimenti etc. tres Iueneas vnum bouiculum et vnum taurum tantum Et inde vadiat deliberacionem predictarum quatuor vaccarum et duorum vitulorum de duabus vaccis que vitulabant trium Iuencarum vnus bouiculi et vnus tauri Et defendit vim et iniuriam quando etc. Et bene aduocat capcionem eorundem aueriarum et iuste etc. Dicit enim quod quidam Galfridus de Cogham aliquando tenuit de Iohanne Hamelyn quondam Priore de Castelaere predecessore etc. vnum Messuagium et duas carueatas terre cum pertinenciis in predicta villa de quibus predictus locus in quo etc. est parcella per homagium et fidelitatem et seruicium triginta solidorum per annum De quibus seruiciis Idem Prior predecessor etc. fuit seisisus per manus predicti Galfridi etc. qui quidem Galfridus de tenementis illis feoffauit predictum Thomam qui nunc queritur Tenendis de capitalibus Dominis feodi etc. post statutum etc. Qui quidem Thomas se attornauit isti Priori nunc de fidelitate sua pro predictis tenementis etc. Et quia predictus redditus triginta solidorum ei aretro fuit per tres annos ante diem capcionis predictae cepit ipse predicta aueria scilicet sex vaccas tres Iueneas vnum bouiculum et vnum taurum in predicto loco in feodo suo etc. Et quo ad deliberacionem aueriarum quam superius vadiauit bene defendit quod predictus Thomas deliberacionem eorundem non fuit secutus etc.

Et Thomas dicit quod predictus Prior capcionem illam iustam aduocare non potest Dicit enim quod predictus Prior cepit aueria illa extra feodum suum Et quod Idem Prior cepit omnia aueria sicut queritur quorum predictae octo vaccae bis vitulabant etc. Et quod ipse frequenter sequebatur uersus ipsum Priorem pro deliberacione habenda et eam hucusque habere non potuit

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 354d., Norfolk.

The Prior of Castleacre in mercy for several defaults etc.

The same Prior was summoned to answer Thomas of Snettertton of a plea why he took the beasts of the same Thomas and them did unjustly detain against gage and pledges etc. And thereof the same Thomas by his attorney doth complain that the aforesaid Prior on the Thursday next before the Feast of St. John before the Latin Gate in the sixth year of the reign of the lord King in the vill of Congham St. Mary's in a certain place which is called Downescroft took eight cows, five heifers, three steers and a bull, the property of the same Thomas, and them doth still unjustly detain against gage etc., each several one of which cows hath twice calved in the park of the said Prior etc.; whereby he saith that he hath suffered loss and hath damage to the amount of twenty pounds. And thereof he produceth suit etc. And he asketh that the Prior may wage deliverance to him of the aforesaid beasts and calves etc.

And the Prior cometh by his attorney and saith that of the aforesaid beasts he took no more than six cows, of which two died in the park of the same Prior from lack of food¹ etc., three heifers, one steer and one bull only; and thereof he wageth deliverance of the aforesaid four cows and two calves of two cows which calved, of three heifers, one steer and one bull. And he denieth force and injury when etc. And he doth well avow the taking of the same beasts and justly etc. For he saith that a certain Geoffrey of Congham at one time held of John Hamelyn, aforetime Prior of Castleacre,² predecessor etc. a messuage and two carucates of land, with the appurtenances, in the aforesaid vill, of which the aforesaid place in which etc. is parcel, by homage and fealty and the service of thirty shillings yearly, of which services the same Prior, predecessor etc., was seised by the hands of the aforesaid Geoffrey etc., which Geoffrey enfeofed the aforesaid Thomas, who now complaineth, of those tenements to hold of the chief lords of the fee etc. after the statute³ etc., which Thomas attorned himself to this Prior that now is for his fealty for the aforesaid tenements etc. And because the aforesaid rent of thirty shillings was in arrear to him for three years before the day of the aforesaid taking he took the aforesaid beasts, to wit, six cows, three heifers, one steer and one bull in the aforesaid place within his fee etc. And as to the deliverance of the beasts which he waged above he doth wholly deny that the aforesaid Thomas sued deliverance of the same etc.

And Thomas saith that the aforesaid Prior cannot avow that taking as just, for he saith that the aforesaid Prior took those beasts outside his fee, and that the same Prior took all the beasts as he complaineth, of which the aforesaid eight cows twice calved etc. And that he oftentimes sued against the same Prior to have deliverance, but hath hitherto not been able to have

¹ It was the duty of the owner of time between the years 1308 and 1311. impounded cattle to feed them.

² Statute of Westminster III. (Quia emptores).

³ John Hamelyn was Prior some

Note from the Record—*continued*.

etc. Et hoc petit quod inquiratur per patriam Et Prior similiter Ideo preceptum est vicecomiti quod venire faciat hic a die Pasche in tres septimanas xij. etc. per quos etc. Et qui nec etc. Quia tam etc.

33. ATTEWELL v. ATTEWELL¹

Entre sur disseisine vers enfaunt deynz age.

William Attewelle de Boreworthe porta soun bref dentre sur la disseisine vers Roger le fitz Nicol attewelle de B. de la moyte de vn mies et vne verge de terre oue les appartenances en B. en les queux mesme cely Roger nauoit entre si noun par Nichol qe de eeo atort et sanz iugement disseisa mesme cely William.

Herle. Nicol nostre pere par qei vous supposez qe nous sumes entre morust seisi de ceuz tenemenz en son demene etc. apres qi mort nous sumes entre come fitz et heir et sumes deynz age et prioms nostre age.

Bortone. Vous nauerez poynt vostre age qe nous vous dioms qe autre foiz a Leyeestre si portames nous vne assise de nouele disseisine de mesme les tenemenz denaunt Sire Henry de Spigurnel etc. uers mesme cely Nichol pendaunt quele assise il morust etc. par qei nostre suyte pery et nous frechement apres sa mort auoms porte cesti Bref vers vous et lestatut voet qe la ou bref est porte etc. et Lautre deuie pendaunt le bref son heir deynz age qe par le nounage le heir ne seit le play delaye et demaundoms iugement depus qe nous sumes en cas de statut vt supra si par vostre nounage deuie nostre bref en nostre plee targer.

Herle. Vous ne dittes pas qil auoit plee pendaunt entre nostre auneestre et vous mesqe bref fut purchase comment voillez eeo auerer.

Scrope Iustice. Quel mestiere ad il dauerer tauntqe il seit dedit *Estre* ceo lestatut ne fet pas mencioum forsqe owelment si bref seit purchase de nouele disseisine et cely sur qy le bref vint come principal disseisor moerge anaunt qe lassise seit passe qe homme eit bref sur heir de quel age qil seit et il dit qil purehasa bref pendaunt quel bref son pere merust et lestatut ne parle mes sil y auoit plee pendaunt etc.

¹ Reported by *M.*

Note from the Record—*continued*.

it. And he asketh that this may be inquired of by the country. And the Prior doth the like. Therefore the Sheriff is ordered to make come here three weeks after Easter twelve etc. by whom etc., and who neither etc., because both etc.

83. ATTEWELL v. ATTEWELL.

Writ of entry on disseisin brought against an infant.

William Attewell of Boreworth brought his writ of entry on disseisin against Roger the son of Nicholas Attewell of B. of the moiety of a messuage and a virgate of land, together with the appurtenances, in B., into which that same Roger had not entry save by Nicholas who disseised this same William of them wrongfully and without judgment.

Herle. Nicholas, our father, by whom you suppose us to have entered, died seised of these tenements in his demesne etc., and upon his death we entered as son and heir; and we are within age and we pray our age.

Burton. You will not have your age, for we tell you that before now we brought an assize of novel disseisin at Leicester of these same tenements before Sir Harry Spigurnel etc. against that Nicholas who died while that assize was hanging, by reason whereof our action was extinguished; and straightway after his death we have brought this writ against you, and the statute¹ provideth that where a writ is brought and the defendant dieth while the writ is hanging, leaving an heir within age, the plea is not to be delayed by the nonage of the heir; and since we come within the provision of the statute *ut supra* we ask judgment whether the writ in our plea ought to be delayed by your nonage.

Herle. You do not say that there was a plea hanging between our ancestor and you, but that a writ was purchased. How do you want to aver this?

SCROPE J. What need hath he to aver it before it be denied? And, besides, the statute merely saith that if a writ of novel disseisin be purchased and he against whom it is directed as principal disseisor die before the assize pass, then the plaintiff may have his writ against the heir, of whatever age he may be; and the plaintiff saith that he purchased a writ and that while that writ was hanging the infant's father died; and the statute saith naught about a plea etc. hanging;

¹ Statute of Westminster I. cap. xlvii.

par quei il semble qe ceo est assez pur ly sil yauoit bref pendaunt qe vous ne deuez vostre age auer.

Herle. Lestatut est done en certain cas cest asauer si la partie moert pendaunt le plee qe adonques ne soit la sute delye etc. mes entaunt com lem poet saunz ley offendre etc. et si homme vous [*sic*] mette a pleder de ceux tenemenz qe a nous sunt issint descenditz a cesti bref de dreit duraunt nostre nounage sil ne put mostrer qe plee fut pendaunt etc. vt supra ou qe partie fut attache ou veuwe fust fet des tenemenz homme fet offense a la ley et nous demaundoms iugement.

Bortone. La patente est enroule en la chancerie la poet la court estre ascerte si bref fut pendaunt ou ne mye si vous le voillez dedire.

Berr. Sil vst sa patente en sa mayn et nous veissoms par la patente qe assise fut arrame auxint come il dit vers Nicol vostre pere vous serrez tost respoundu a vostre nounage quasi diceret il respoundreit saunz rien parler plus de plee pendaunt.

Herle. Vncore ne purreit homme iammes sauer le quel Lassise fut arrame de ceux tenemenz ou des autres tenemenz si la vewe ne vst este fait ou partie attache.

Berr. Si la vewe ne fut mye fete auant veez cy vous la puissez auer ore.

Herle demaunda la vewe.

Bortone. Vous ne lauerez poynt qe vous auez auant dit qe vostre pere morust seisi etc. apres qy mort vous estes entre et issint estes vous ascerte etc. par quei il nest mye mestiere de la vewe.

Herle. Si vous nous voillez oster de la vewe nous voloms demorer sur nostre primer plee.

Berr. Voillez vous qil eit la vewe ou vous voillez demorer sur la primer plee.

Bortone. Mesqe il eit la vewe vncore auera il mesme le plee apres la vewe qe il ad ore etc.

Et postea concessit visum et fuit casus qe le pere lenfant al assise de nouele disseisine morust auant la cessioun des Iustices par quei il ne purreit mie estre attache ne vewe estre fait as iurours etc.

and therefore it seemeth that if he had a writ hanging that is sufficient reason why you ought not to have your age.

Herle. The statute is provided to meet a certain case, that is to say, the case of the defendant dying while the plea is hanging, when the action is not to be delayed etc., but this is only so far as may be without improperly straining the law etc., but if you make us plead during our nonage under this writ of right in defence of these tenements which have thus descended to us, unless it be shown that a plea was hanging etc. *ut supra*, or that the defendant was attached or that view of the tenements was had, the law is being strained, and we ask judgment.

Burton. The patent [for the assize] is enrolled in Chancery where the Court can be certified whether a writ was hanging or not, if you want to deny it.

BEREFORD C.J. If he had his patent in his hand and we saw from the patent that the assize had been summoned as he saith against Nicholas your father, you would get swift answer to your nonage—meaning that there would be no more words about a hanging plea.

Herle. But, even in that case it would not be certain whether the assize had been summoned in respect of these tenements or of other tenements unless a view had been made or the defendant attached.

BEREFORD C.J. If a view were not made before, see if you can have one now.

Herle asked for a view.

Burton. You will not have one, for you have already said that your father died seised etc. and that you entered after his death, and so you are certified etc., and therefore there is no need of the view.

Herle. If you oppose our having the view we will abide by our first plea.

BEREFORD C.J. Will you consent to their having the view, or do you prefer that they should abide by their first plea?

Burton. Even though he have the view, he will still have the same plea after the view that he hath now etc.

And on a later day he conceded the view. And the fact was that the infant's father died before the Justices sat at the assize of novel disseisin, and he could not, therefore, be attached, neither could there be a view by the jurors etc.

84. ANON. v. MAIDSTONE (BISHOP OF WORCESTER).¹I.²

Dette versus Episcopum non nominatum Episcopum ideo nichil cepit per breue.

Vn A. porta bref de dette vers Wauter de Maydenstone et counta qe il luy fut tenu et oblige par diuerses obligaciouns et tailles a la court.

Ston. Wauter de Maydestan est ore euesqe de Wayneestre³ qe est noun de dignete il [nient] nome Eueske iugement du bref.

Scrop. Les obligaciouns par queux nous demaundoms eeste dette si firent en Lan le Roy qe mort est xiiij. etc. longe temps auaunt ceo qil fut Euesqe de Wyncestre par qei il nest mye mestiere qil soit nome par noun de dignete. *Item* nous ne demaundoms rien qe soit annexe al Euesqe par qei etc.

Herle. Auxint quant mestiere est ceo qe Leuesqe seit nome par noun de dignite come si Abbe vst oblige auaunt ceo qil fut troue Abbe mes deuers Abbe nul bref ne serra meyntenu sil ne fut nome par noun de dignete ergo leuesqe.

Lambert. Il est autre de Abbe qe de Euesqe car Abbe ad couent et successor et issint nad pas Euesqe.

Scrop. Si Wauter de Maydestan vst purchace terre auaunt ceo qil fut euesqe ieo demaundasse la terre vers Wauter de Maydenstan a ceo le bref serreit assez bon et a multo fortiori hic.

Ston. et *Herle* dixerunt quod non.

Postea Berr. et *Inge* dixerunt quod breue nichil valuit et abaterunt le bref etc.

II.⁴

Nota de dette.

Bref de dette fut porte vers Walter de Maydistone.

Herle. Iugement desicom W. est Euesqe sacre nynt nome par noun de dignite iugement.

Scrop. Le contract se fit x. aunz auaunt qil fut Euesqe et homme ne put fere acquitaunce si noun accordaunt al fest iugement.

¹ Reported by *M* and *D*. ² Text of (I) from *M*. ³ Walter of Maidstone was Bishop of Worcester, not of Winchester, from 1314 to 1317. ⁴ Text of (II) from *D*.

34. ANON. v. MAIDSTONE (BISHOP OF WORCESTER).

I.

Writ of debt brought against a bishop who was not described as a bishop. The plaintiff consequently took naught by his writ.

One A. brought a writ of debt against Walter of Maidstone and counted that he was held and bound to him by divers bonds and ¹tallies to the Court.²

Stonor. Walter of Maidstone is now Bishop of Worcester³ which is a name of dignity, and he is not described as bishop [in the writ]. Judgment of the writ.

Scrope. The bonds by which we claim this debt were made in the thirteenth year etc. of the King that is dead, a long while before the defendant was Bishop of Worcester, and so it is not necessary that he be named by his name of dignity. And, further, we are claiming naught that belongeth to him as bishop; wherefore etc.

Herle. It is quite as necessary that the Bishop should be named by his name of dignity as it would be that an abbot who had bound himself before he became an abbot should be, and no writ against an abbot could be maintained if he were not named by his name of dignity; therefore also in the case of a bishop.

TRIKINGHAM J. It is not the same in the case of an abbot as in that of a bishop, for the abbot hath a convent and a successor, but the bishop hath not.

Scrope. If Walter of Maidstone had purchased land before he was a bishop, and I claimed the land against Walter of Maidstone, the writ in that case would be good enough, and much more so here.

Stonor and *Herle* denied this.

On a later day BEREFORD C.J. and INGE J. said that the writ was worth naught and they abated the writ etc.

II.

Note on debt.

A writ of debt was brought against Walter of Maidstone.

Herle. Judgment, since Walter is consecrated bishop and is not named by name of dignity. Judgment.

Scrope. The contract was made ten years before he was a bishop, and acquittance can be given only in accordance with the deed. Judgment.

^{1,2} The meaning probably is that the bonds and tallies were made and acknowledged in Court.
³ See the text and footnote thereon.

Denom. Il ne couent pas nomer le par noun de dignite tut fut il en plee de terre si la demaunde ne fut de chose annexe a sa eglise ou a sa dignite ou a sa Eueche quod idem est.

Herle. Si leuesqe en ceo cas face defaute issi qe le viconte rendreit¹ de issues les issues serrount leuetz de sa Euesqe et issi couendreit il nomer le par noun de dignite.

Inge dit en consorlamente² [sic] qil ly nomassent par noun de dignite mes il ne dit pas par iugement etc.

35. ANON.³

De Recto ou le bref abatu pur la variaunce entre le original et le pone.

Vn'A. porta son bref son bref [sic] de dreit vers plusours deforceors ou la parole fut remue en Baunk par vn pone dount vn des nomes en le original demaunda iugement de la variaunce entre le pone et le original pur qil auoit .ij. nomez en le original qe ne furent pas nomez en le pone.

Denom. Vous estes de vne partie de nostre demande et estes nome par vous meimes par le somouns et les autres en meme le manere par altre somouns et neutendoms pas qe sil ny vst variaunce entre le somouns ou vous estes nome et le Original qe vous puissez nostre bref abatre.

Hed. Vous auez fet vostre demaunde auxint entire en le somouns come en le Original en supposaut qe ceux qe sont nomez en le somouns seient tenauntz de tut vostre demaunde mes ceo ne poez vous dire qe ily ount deus en le original iugement etc.

Inge. Partie de la parole ne poet estre yey et partie aillours par vne mesme original et pur ceo si vous auez autre chose a dire de meyntenir vostre bref mostrez le ou autrement etc.

Denom. Sire nous dioms qe ne sunt pas en Court quant les parties plederent et disseint qe ceo fut vn bref de dreit et qe il furent dedeynz age ou il ne pount estre partie a cel play et prierent lour age ou fut dit quant a eux qe la parole demourast saunz iour taunt a lour age et issint est la parole remue quant as autres et noun pas quant a eux et demaundoms iugement.

Mugg. Vncore demaundoms iugement del heure qil veut auer en son pone vn forprise de taunt come les .ij. tyndrent qe auient lour age

¹ Possibly a slip for *prendreit*.

² Probably meant for *conseillement*.

³ Reported by *M.*

Denham. Even though he were impleaded in a plea of land it would not be proper to name him by his name of dignity unless the land claimed was annexed to his church or to his dignity or to his bishopric, which is the same thing.

Herle. If in these circumstances the Bishop should make default so that the Sheriff seized the issues, the issues would be levied on his bishopric, and so he ought to be named by his name of dignity.

INGE J. said in discussion that he ought to be named by his name of dignity, but he did not say it by way of judgment etc.

35. ANON.

Writ of right, where the writ was abated by reason of variance between the writ original and the *pone*.

One A. brought his writ of right against several deforeers and the hearing was removed into the Bench by a writ of *pone*. Then one of those who were named in the writ original asked judgment of variance between the *pone* and the writ original on the ground that two were named in the writ original who were not named in the *pone*.

Denham. It is against you that we bring one part of our claim and you are named by yourselves in the summons, and the others are similarly named in another summons; and we do not think that there is any variance between the summons where you are named and the writ original that will enable you to abate our writ.

Hedon. You have made your claim as one whole both in the summons and in the writ original, supposing that they who are named in the summons are the tenants of the whole of your demand; but you cannot maintain that, for there are two in the writ original [who are not in the *pone*]. Judgment etc.

INGE J. Part of an action by one writ original cannot be tried here and part somewhere else, and, therefore, if you have aught else to say in support of your writ, put it forward, or otherwise etc.

Denham. Sir, we tell you that they are not before the Court. When the parties pleaded [in the Court baron] they said that this was a writ of right and that they were within age and could not be party to this plea, and they prayed their age, and it was ruled that in respect of them the hearing should remain without day until their age. The hearing is therefore removed [into the Bench] as against the others, and not against these, and we ask judgment.

Miggeley. We again ask judgment since he wanteth to have excepted from his *pone* so much of the demand as is held by the two who had their age allowed, and so to bring his claim against those

et issint fere accordaunce de sa demaunde vers ceux qe sunt nomez en le original et demaundoms iugement.

Berr. Vostre bref met apertement vostre demaunde en enterement en le pone de quele demaunde vous naucez mie tenauntz nome pur taunt etc.

Inge. Pur ceo qe vous ne sauez autre chose dire pur meyntenir vostre bref fors la parole en dreit de .ij. pur lour nounage demora sanz iour ou vous pussez ceo qe eux furent en tenaunce fors prendre en vostre pone par qe agarde ceste court qe vous ne preigne rien par vostre bref.

Mes ore fet a demander si la parole demora [sic] en court de baroun pur lour nounage de deus saunz iour seyt anentz ou noun et dicitur quod sic.

Quere.

36. BURES v. THE ABBOT OF FÉCAMP.¹

Forma donacionis ou le remeyndre ne fut taille fors par le auer et tenir.

Iohan de Brueys et Ione sa femme porterent bref de forme de doun en le remeyndre vers Labbe de Fesscamp et dit qe A. dona a B. et a les heirs de son corps issauntz et sil deuiast etc. qe les tenemenz remeyndreient a Ione et a les heirs de son corps etc.² et si Iohane deuiast etc. a F. et a les heirs de son corps issauntz.³ Et les queux apres la mort B. pur ceo qil morust etc. a Iohane remeyndre deuient par la forme etc.

Herle. Qe i auez de la forme.

Denoum. Nous le volloms auer et ceo nous suffit countre vous car vous estes estraunge al donour et a cely a qi les tenemenz furent donez et rien de lour saunk par qe assez nous suffit dauerer la forme.

Herle. Vous estes estraunge quant a ceux tenemenz et ne poez counter de la scisine nul de vos auncestres ne rien demaunder si noun come estraunge et ceo par vne forme ^{2a} vous ³ taille par le remeyndre de qe vous ne mostrez rien a la court ne a la partie qe poet affirmer ceste accioun en vostre persone et demaundoms iugement coment nous denoms departir.

Postea *Berr.* ly chace a moustre sil auoit rien.

Denoum mist anaunt ⁴vne tele⁵ chartre a la court et nient a la

¹ Reported by M and X. Text from M collated with X. Headnote from X. This is Fitzherbert, *Formedon*, f. 19, case 34. ²⁻³ Added from X. ⁴⁻⁵ From X; title, M.

who are named in the writ original in accordance [with the *pone*]; and we ask judgment.

BEREFORD C.J. Your writ fully setteth out your whole claim. In the *pone* you have no tenants named in respect of a parcel of that claim etc.

INGE J. Seeing that you can say naught else in support of your writ than that the hearing remained without day in respect of the two because of their nonage, when you could have said, to give validity to your *pone*, that they were tenants, this Court adjudgeth that you take naught by your writ.

But now it is to be asked whether the action against the two Query. which remained without day because of their nonage is extinguished or not. And it is said that it is.

36. BURES v. THE ABBOT OF FÉCAMP.¹

Formedon, where the remainder was tailed only by the *habendum et tenendum*.

John of Brueys and Joan his wife brought a writ of formedon in the remainder against the Abbot of Fécamp and said that A. granted to B. and to the heirs of his body issuing, and if B. died etc. the tenements were to remain to Joan and to the heirs of her body etc., and if Joan died etc. to F. and to the heirs of her body issuing; the which tenements ought by the form to descend to Joan after the death of B., because he died etc.

Herle. What have you in proof of the form?

Denham. We will aver it, and it is sufficient for us to do that against you, for you are not privy to the grantor nor to him to whom the tenements were granted and are not of their blood; and therefore it is enough if we aver the form.

Herle. You are a stranger so far as these tenements are concerned and you cannot count of the seisin of any of your ancestors nor claim aught except as a stranger, and only that by an [alleged] form of gift tailed in the remainder to you, of which you show naught either to the Court or to the defendant which can support this right of action in you, and we ask judgment how we ought to go away.

On a later day BEREFORD C.J. pressed him to show if he had aught in proof.

Denham proffered a charter in the following terms [made] to the

¹ See the Introduction, p. 1 above. England—at Cogges in Oxfordshire and The Abbey of Fécamp had two cells in at Steyning in Sussex.

partie. Sciant etc. quod ego A. dedi B. tenementa etc. habenda et tenenda etc. sibi et heredibus suis de corpore suo procreatis et si descedat sine herede de corpore suo procreato etc. Iohanne et heredibus de corpore suo procreatis. Et si descedat sine herede de corpore suo procreato etc. F. et heredibus de corpore suo procreatis etc.

Herle. Vous veez sire eoment il demandent ceux tenemenz par vne remeyndre quele accioun est done a nully sy noun par especialte qe le proue et ceo par espeeiele parole ef le fet qil mettent auant ne proue nule remeyndre estre taille etc. et demandoms iugement du bref.

¹*Scrop.* Vostre [*sic*] bref² testmoigne assez la forme de nostre accioun et coment qil ne soient mie en la chartre paroles accordauntz a nostre bref ily sont paroles assez entendables a prouer la forme tiel come nous dioms et demandoms iugement. Item nous auoms vewe auant ces hours qe homme ad mys est³ [*sic*] chartres ⁴le reuertatur⁵ pur le remaneat et conuerso⁶ en forme de doun et si ad la forme este meyn tenue etc. et ceo par lentendement qe homme poet auer des paroles tut ne soient elcs mye couenables ne⁶ de due forme qe homme auera regarde⁷ a la volente le donour et a ceo meyn tenir serra la ley fauorable et demandoms iugement.

Herle. La volente le donour ne peut estre conu ou le dreit passera en estraunge persone forsque par paroles espeeiels comprises en son fait qe le testmoigne mes ore ne ad il nule espeeiale parole qe proue le dreit passer en estraunge persone. Iugement.

Ston. La chartre voet auer et tenir a B. etc. vt supra et sil deuie etc. a Iohane etc. et issint sey estendent le auer et le tener auxi bien a Iohane si B. etc. com a B. issint prouent celes paroles auer et tenir auxi bien le remeyndre a Iohane si B. deuie etc. com le doun fet a B. et demandoms iugement.

Berr. Deit Iohane auer et tenir ceo qe ele nad mye quasi diceret non. *Estre ceo* le dreit ne poet mye passer par my cele elause habenda et tenenda car ieo pos qe William Herle viegne ey en Court et conusse certains tenemenz estre le dreit Iohan Denoum com ceo qil ad de son doun et a auer et tenir a lui et a sa femme et a ses heirs lestat la femme en ceo cas est nulle et si est ele nome en le auer et le tenir par qei vostre resoun ne lie mye.

Scrope. Si Iohane fut einz et le donour portast deuers lui bref a demander ceux tenemenz elle lui barreit par vertue de ceo chartre et depus qe ce cele chartre serroit barre countre le demandant en

¹⁻² Some words have been erased here in X. ³ en, X. ⁴⁻⁵ X omits.
⁶ X omits. ⁷ la garde, X.

Court and not to the defendant. 'Let all etc. know, that I, A., have given to B. the tenements etc. to have and to hold etc. to him and to the heirs of his body gendered; and if he should die without heir of his body gendered etc., then to Joan and to the heirs of her body gendered; and if she die without heir of her body gendered etc., then to F. and to the heirs of her body gendered etc.'

Herle. You see, sir, how they are claiming these tenements by a remainder, but this action is given to none save by a specialty which proveth it, and proveth it by specific words; and the deed which they proffer doth not prove that any remainder was tailed etc., and we ask judgment of the writ.

Scrope. Our writ¹ sufficiently witnesseth the form of our action, and even though there be not in the charter any words which specifically bear out our writ yet there are words which may be understood to prove that the form is as we say, and we ask judgment. Again, we have seen before now where *revertatur* hath been put in charters for *remaneat*, and conversely, in a form of gift, and yet the form hath been upheld etc., and that because of the construction which could be put upon the words, though they were not the proper or technically correct ones, for regard must be had to the wishes of the donor, and the law is always disposed to give effect to them; and we ask judgment.

Herle. The wishes of the donor, in the case where the right passeth to a stranger, can be known only from the specific words in his deed which witness them, but here there are no specific words proving that the right should pass to a stranger. Judgment.

Stonor. The charter said 'to have and to hold to B. etc.' *ut supra*, 'and if he die to Joan etc.,' and so the 'to have and to hold' apply to Joan as well as to B. Consequently these words 'to have and to hold' prove the remainder to Joan if B. die etc. equally with the gift made to B., and we ask judgment.

BEREFORD C.J. Ought Joan to have and to hold that which she hath not?—*intimating that she ought not.* Further, the right cannot pass by these words *habenda et tenenda*, for I put the case that William Herle come into Court here and acknowledge certain tenements to be the right of John Denham as those which John hath by his gift, to have and to hold to him and to his wife and to his heirs. The wife's estate, in this case, is naught, and yet she is named in the 'to have and to hold,' and therefore your reasoning is not conclusive.

Scrope. If Joan were in possession, and the donor brought his writ against her to claim those tenements, she could bar him in virtue of this charter; and since this charter would bar the claimant during

¹ See the text.

sa tenaunce il semble qe sa accioun serroit meyntenu par mesme la chartre la ou ele est hors.

Herle. La chartre ne barre point le demandant et tut fut il auxint com vous dittes ceo ne proue rien a nostre matiere car si celui en le remeyndre soit einz et eit perdue sa chartre vncore poet il defendre sa tenaunce et sil¹ seit hors il² nauera iammes rien. *Item* le auer et le tenir sei extendent al doun et ne mye al³ estraunge persone en qi rien ne passe par le doun.

Inge. Homme put auer entendu⁴ par les paroles comprises en la chartre de la volente le donour sauuer⁵ si B. deuie etc. a Ione et a les heirs de son corps⁶ engendres.⁷ Et si homme deuerait estendre cesti accioun le donour serroit resceu a demander qe serroit proprement a doner lui accioun countre son fait demene et ceo serreit encountre ley Et meynt homme fet Chartre qe ne se⁸ conust pas en ley par qei si homme put auoir entendement de les paroles compris etc. assez est et chescun qe eit entendement de latyn put entendre par les paroles auoir et tenir a B. et a les heirs de son corps issauntz etc. Et sil deuie a auoir et tenir a Iohane et a les heirs de son corps etc. vt supra.

Herle. Le auoir et le tenir ne put nent tailler le remeindre en estraunge persone sanz especiele parole etc. Et si vous veez qe le accioun soit meintenu par vertue de cele Chartre nous respondrons assez.

Inge. Le auer et le tenir taille la forme en ceo cas et nous veioms oue ceo la bone feie ouesqe lentendement de la chartre etc. par qei nous vous dioms qe vous respoudez.

Denoum. Quant a vn mees et vne Carue de terre A. ne dona poynt prest etc. Et quant a xxij.⁹ s. de Rente nous vouchoms a garauntie B. qe serra somounce en la Counte de N. etc.

Note from the Record.

De Banco Roll, Easter, 8 Edw. II. (No. 209), r. 23d., Sussex.

Iohannes de Bures iunior et Iohanna vxor eius per attornatum suum petunt uersus Abbatem de Fiscampo centum et tres solidatas et duas denariatas et vnam obolatam redditus cum pertinenciis in Rug Wyke Slyndefold Chiltyngtone Pubhereghe [*sic*] Billynghurst et Stenyngg quas Iohannes de Pollynggefold dedit Alano de Pollingfolde et heredibus de corpore suo exeuntibus et que post mortem ipsius Alani prefate Iohanne et heredibus de

¹ si ele, X. ² ele, X. ³ en, X. ⁴ entendement, X. ⁵ et, X.
⁶ X omits. ⁷ issauntz, X. ⁸ X omits. ⁹ xxij, X.

Joan's tenancy, it seemeth that she can maintain her action by virtue of this same charter when she is not in possession.

Herle. The charter would not bar the claimant; but, though it were as you say, the charter proveth naught that is material to us, for if the remainderman were in possession and had lost his charter, he could still defend his tenancy, but if he be out of possession he will never get aught. And further, the words 'to have and to hold' refer to the gift only, and not to a stranger to whom naught passeth by the gift.

INGE J. The wishes of the donor may be gathered from the words of the charter to this extent, namely, that if B. died etc., then the remainder was to be to Joan and to the heirs of her body gendered. And if a right of action should be denied [to Joan], then the donor must be received to claim, and this would be, strictly speaking, to give him a right of action against his own deed, which would be contrary to law. And many a man maketh a charter who is no lawyer, and therefore if we can gather what he intended from the words comprised etc. it is enough for us; and anyone who understandeth Latin can understand [what is meant by] the words 'to have and to hold to B. and to the heirs of his body issuing etc., and, if he die, to have and to hold to Joan and to the heirs of her body etc.' *ut supra*.

Herle. The 'to have and to hold' cannot tail the remainder in a stranger without specific words etc.; but if you be of opinion that the action is maintainable by virtue of this charter, we have enough to say in answer.

INGE J. The 'to have and to hold' tailleth the form in this case, and we are 'construing the charter with the honest intention of giving effect to the donor's wishes,'² and so we say that you must answer.

Denham. As to a messuage and a carucate of land, A. did not give, ready etc. And, as to twenty-three shillings of rent, we vouch to warranty B., who will be summoned in the county of N. etc.

Note from the Record.

De Banco Roll, Easter, 8 Edw. II. (No. 209), r. 23d., Sussex.

John of Bures the younger and Joan his wife by their attorney claim against the Abbot of Fécamp rents to the amount of one hundred and three shillings, two pence and a halfpenny, with the appurtenances, in Rudgwick, Slinfold, Chiltonington, Pulborough, Billingshurst and Steyning, which John of Polingfield gave to Alan of Polingfield and to the heirs of his body issuing, and which, after the death of the aforesaid Alan, ought to remain to the aforesaid Joan

¹⁻² The text is not very clear, but the free translation above probably gives the intended meaning.

Note from the Record—continued.

corpore suo exeuntibus remanere debent per formam donacionis quam predictus Iohannes de Pollingefolde inde fecit prefato Alano eo quod idem Alanus obiit sine herede de corpore suo exeunte etc. Et Abbas per attornatum suum venit Et petit quod predicti Iohannes et Iohanna ostendant si quid specialitatis habeant per quod predicta tenementa eis remanere debent in forma predicta etc. Et Iohannes et Iohanna proferunt quandam cartam que testatur quod predictus Iohannes de Polinggefolde dedit et concessit et carta sua confirmavit predicto Alano predicta tenementa cum pertinentiis Habenda et Tenenda sibi et heredibus suis de se legitime procreatis et si decedat sine herede de se Iohanne filie Roberti le Dol et heredibus de se legitime procreatis et si sine herede de se decedat Isabelle vxori Roberti le Dol et heredibus suis faciendo capitalibus dominis feodi seruicia inde debita etc. et dicunt quod predicta Iohanna vxor predicti Iohannis qui nunc petunt est eadem Iohanna filia Roberti le Dol in carta nominata et petunt quod Abbas respondeat etc. Et Abbas dicit quod predicti Iohannes et Iohanna per cartam quam proferunt ad huiusmodi breue de forma donacionis responderi non debent etc. Dicit enim quod in accione super huiusmodi breui de remanere etc. necessario requirit quod in facto special expresse notetur illud verbum remaneat etc. siue sit finis siue carta etc. Et ex quo in predicta carta nulla sit mencio de predicto verbo remaneat per quod verbum eisdem Iohanni et Iohanne cum ipsa Iohanna sit proquisitrix etc. subueniri debuit pro accione sua manutenenda maxime cum per dictum donum factum predicto Alano per predictam cartam nichil eidem Iohanne accrescere potest cum sit eidem dono omnino extranea petit Iudicium etc.

Et Iohannes et Iohanna dicunt quod cum accio eis competat petendi predicta tenementa in forma predicta racione carte quam proferunt que quidem carta est ita sufficientis intellectus quod per eam intelligi potest tenementa in eadem contenta ipsi Iohanne remanenda nec predicto donatori reuertenda per cartam predictam petunt Iudicium si predictus Abbas respondere non debeat etc. Et quia videtur curie quod per cartam predictam que quamuis potuit in se plenior fuisse quam existit satis potest attachiari de intellectu quo ad predictum breue manutenendum cum in cartis seu scriptis non sint communiter verba Ita ordinata seu regulata sicut in finibus leuatis et tamen huiusmodi carte seu scripta sunt effectus et effectum tenere debent in suo casu dictum est ei per Iusticiarios quod respondeat etc. Et Idem Abbas defendit Ius suum quando etc. Et quo ad viginti et tres solidatas redditus de predicto redditu bene defendit quod predictus Iohannes redditum illum non dedit predicto Alano sicut predicti Iohannes et Iohanna dicunt Et de hoc ponit se super patriam. Et Iohannes et Iohanna similiter. Ideo preeceptum est vicecomiti quod venire faciat hic in octabis sancti Michaelis xij. etc. per quos etc. Et qui nec etc. Quia tam etc. Postea in octabis

Note from the Record—continued.

and to the heirs of her body issuing by the form of the gift which the aforesaid John of Polingfield made thereof to the aforesaid Alan, because the said Alan died without heir of his body issuing etc. And the Abbot cometh by his attorney and asketh that the aforesaid John and Joan shall produce a specialty, if they have one, by which the aforesaid tenements ought to remain to them in the form aforesaid etc. And John and Joan tender a certain charter which witnesseth that the aforesaid John of Polingfield gave and granted and by his charter confirmed to the aforesaid Alan the aforesaid tenements with the appurtenances to have and to hold to him and to the heirs of his body lawfully begotten, and if he die without heir of his body to Joan, daughter of Robert the Dol, and the heirs of her body lawfully begotten, and if she die without heir of her body to Isabel, wife of Robert the Dol, and her heirs, rendering therefor to the chief lords of the fee the services due therefrom etc.; and they say that the aforesaid Joan, wife of the aforesaid John, the which John and Joan are the present plaintiffs, is the same Joan, daughter of Robert the Dol, as is named in the charter, and they ask that the Abbot answer etc. And the Abbot saith that the aforesaid John and Joan ought not to be answered to a writ of formedon of this kind on the strength of the charter which they tender etc. For he saith that in an action on the remainder etc. by a writ of this kind it is necessary that the words 'shall remain' be expressly set out in the specialty, whether it be a fine or a charter etc. And because in the aforesaid charter the aforesaid words, 'shall remain,' do not occur, which words are necessary to the same John and Joan, to show how the same Joan can be a purchaser, if they are to maintain their action, especially as naught can accrue to the same Joan by reason of the said gift made to the aforesaid Alan, to which gift she is wholly a stranger, he asketh judgement etc.

And John and Joan say that, since a right of action to claim the aforesaid tenements in the form aforesaid accrueth to them by reason of the charter which they tender, which charter is expressed with sufficient clearness to make it plain that the tenements comprised in the same were intended to remain to her, Joan, and were not by the said charter to revert to the aforesaid donor, they ask judgment whether the aforesaid Abbot ought not to answer etc. And because it seemeth to the Court that a sufficiently clear intention can be gathered from the aforesaid charter to maintain the aforesaid writ, which charter indeed might have been couched in more fitting terms, though the form of words used in charters and writings does not commonly follow precedent and rule so strictly as in the levying of fines, and since charters of this kind are operative and ought to be operative in their respective cases, the Abbot is told by the justices that he must answer etc. And the same Abbot denieth the right of John and Joan when etc. And as to a rent of three and twenty shillings, parcel of the aforesaid rent, he wholly denieth that the aforesaid John [of Polingfield] gave that rent to the aforesaid Alan as John and Joan do say. And of this he putteth himself upon the country. And John and Joan do the like. So the Sheriff is commanded to make come here in the octaves of St. Michael twelve etc. by whom etc., and who are neither

Note from the Record—*continued*.

sancte Trinitatis anno regni domini Regis nunc nono veniunt partes predictæ Et similiter Iuratores de consensu parcium electi Qui dicunt super sacramentum suum quod predictus Iohannes de Pollyngfolde non dedit predicto Alano predictas viginti et tres solidatas redditus sicut predicti Iohannes de Bures et Iohanna dicunt. Ideo consideratum est quod predictus Abbas eat inde sine die Et Iohannes de Bures et Iohanna nichil capiant per Iurata[m] istam set sint in misericordia pro falso clamore etc.

Et Idem Abbas quo ad residuum predicti redditus vocat ad Warrantum Aliciam atte Thele habeat eam hic ad prefatum terminum per auxilium Curie etc. Et summoneatur in eodem Comitatu.

37. FITZWARREN v. THE ABBOT OF ST. EDMUNDS.¹

Richard le fitz Warin porta soun replegiare vers Labbe de seynt Edmund pur la resoun qe Wauter pere Richard retient de H. Counte de Nichole come del Maner de Cressewelle par certeyns services le quel H. fut seisi des services et puis dona le maner de Cressewelle a W. et a Iuliane sa femme cum pertinenciis a lour deus vies as queux le pere Richard sey attorna apres la mort W. baroun et Iuliane le counte graunta la reuersioun apres la mort Iuliane a Thomas predecessour etc. et pur les services areres etc.

Scrop. Vous auowez de la seisine cely a qy vous estes de rien prinne iugement de la forme.

Herle. Nous ne pouns autre forme auer ergo cest accioun [*sic*].

Scrop. Seignourie ne poet passer saunz attornement et ceo nauez pas moustre iugement.

Ingh. Vous meines apres la mort vostre pere attornastes a Iuliane qe tient de nous a terme de vie issint attornastes nostre dreit.

Scrop. Ou maner a qei services de fraunetenement etc. Homme suyt per que seruitia.

Toud. Oyl la ou le feffour tient le maner set hic etc. nous ne poms vers autres suyre nisi vt supra.

¹ Reported by *M.*

Note from the Record—continued.

etc., because both etc. Afterwards, in the octaves of the Holy Trinity in the ninth year of the reign of the lord King that now is, the aforesaid parties come, and likewise the jurors, chosen by consent of the parties, who upon their oath do say that the aforesaid John of Polingfield did not give the aforesaid three and twenty shillings of rent to the aforesaid Alan as the aforesaid John of Bures and Joan do say. So it is considered that the aforesaid Abbot go hence without day; and John of Bures and Joan are to take naught by that jury, but are to be in mercy for their false claim etc.

And the same Abbot, as to the residue of the aforesaid rent, voucheth to warrant Alice at Thele. He is to have her here on the aforesaid term day¹ by aid of the Court etc. And she is to be summoned in the same county.

37. FITZWARREN *v.* THE ABBOT OF ST. EDMUNDS.

Richard Fitzwarren brought his writ of replevin against the Abbot of St. Edmunds, who avowed on the ground that Walter, Richard's father, held of H., Earl of Lincoln, as of the manor of Cresswell, by certain services. The said H. was seised of the services and afterwards granted the manor of Creswell to W. and to Gillian, his wife, together with the appurtenances, for their two lives, to whom Richard's father attorned himself. After the death of W., the husband, and [in the lifetime of] Gillian, the Earl granted the reversion after the death of Gillian, to Thomas, predecessor etc., and for the services in arrear etc.

Scrope. You avow of the seisin of one to whom you are in no way privy. Judgment of the form.

H. rle. We can have no other form, therefore this is the proper form of action.

Scrope. Lordship cannot pass without attornment, and you have shown none. Judgment.

Ingham. After the death of your father you yourself attorned to Gillian who held of us for the term of her life, and so you attorned as of our right.

Scrope. In case of a manor to which freehold services etc. you ought to sue by the *per quae servitia*.

Toudeby. Yes, where the feoffor holdeth the manor, but here etc. we cannot sue against others except *ut supra*.

¹ No term day has been mentioned for the appearance of Alice; but between the concluding paragraph of the record and the earlier part of it a blank has been left on the roll for

matter which was never inserted. If it had been, the day on which Alice was to appear would probably have been stated.

Herle. Si le Counte apres la reuercioun graunte etc. et lattornement fet vous vst destreint vous vssez descharge vers ly de allegier le fet vt supra et de chescun il vous couient tenir.

Scrop. Poet estre qil ad acquitaunce del Counte et si Labbe ore puisse auowere il perdreit Lacquitaunce et ceo serreit duresce.

Et ideo adiornatur etc.

38. PORTERS v. THE ABBOT OF CHALCOMBE.¹

Replegiare.

Iohan de porters porta son replegiare uers le abbe de Chausecoumbe et sei pleynt qe il auoit pris ses auers nomement trois boefs etc.

Le Abbe auowa la prise bone par la resoun qe vne Auueis tynt de ly taunt des tenements en la ville auaunt dit dount le leu ou la prise fut fete en est parcelle pur fealte et les seruices de .x.s. par an des queux seruices le abbe rauf predecessor etc. fut seisi par mie la mayne cest Auueis etc. et pur la rente arrere quater anz deuaunt le iour de la prise etc.

Iohan dit qe il tynt meyme ceux tenements com du droit sa femme. . . .² etc. et pria aide de sa femme . . .² vint en Court.

Scrop. Cest auowerie est merueillous del hure qe le baroun repleuit et pleint la auowerie deueroit auer este fete sur le . . .² com sur son uerray tenaunt come du droit sa femme et moustrerent auaunt vn bre qe dit le Roy saluz ses iustices du baunk si poet estre aperte a vous qe Auueis seit de nostre homage cum par regarde de de [sic] nos roulles de la ehauncelrie anoms troue facez en la besoygne qe est entre le abbe etc. qe fait a faire de droit nous vous dioms pur Auueis qe ele ad fett homage al roy pur meymes les tenements par qey nentendoms qe voillez lay altri tenaunt saunz consulier al roy.

Berr. Comment pooms nous de ceo estre apais ieo ne sai rien veer pur rien qe vous dittez qe nous counsahieroms mes vostre dit mes vous nauez rienz qe proue vostre dit.

¹ Reported by *H.*

² The MS. is badly rubbed here.

Herle. If after the grant of the reversion and attornment made the Earl had distrained you, you could have discharged yourself against him by virtue of the deed *ut supra*,¹ and against anyone of whom you might hold [by his grant].²

Scrope. It may be that [Richard] hath the Earl's acquittance, and, if the Abbot can now avow, he will lose the advantage of that acquittance, and there would be hardship in that.

And so he is adjourned etc.

38. PORTERS v. THE ABBOT OF CHALCOMBE.

Replevin.

John of Porters brought his writ of replevin against the Abbot of Chalcombe and complained that the Abbot had taken his beasts, to wit, three bullocks etc.

The Abbot avowed the taking good because one Avice held of him certain tenements in the vill aforesaid, of which the place where the seizure was made is parcel, by fealty and the services of ten shillings a year, of which services the Abbot Ralph,³ predecessor etc., was seised by the hand of this Avice etc., and for rent in arrear four years before the day of the seizure etc.

John said that he held these same tenements as of the right of his wife . . .⁴ etc., and he prayed aid of his wife. [Avice⁴] came into Court.

Scrope. This is a wonderful avowry, for it was the husband who replevied and hath made complaint. The avowry ought to have been made on the husband,⁴ as on his very tenant, as of the right of his wife—and he proffered a writ which ran:—The King to his Justices of the Bench greeting. If it can be shown to you that Avice is of our homage, as by inspection of our rolls of the Chancery we have found is the case, see to it that right is done to her in the matter between the Abbot etc.—We tell you on behalf of Avice that she hath done homage to the King for these same tenements, and therefore we do not think that you will take her to be the tenant of any other without referring the matter to the King.

BEREFORD C.J. How can we certify ourselves of this? I can see no reason why we should consult [the King] beyond your own statement, and you have naught in proof of what you say.

^{1,2} The text seems corrupt, and the translation given above is conjectural.

³ No Abbot of this name is known to Dugdale.

⁴ See the text and footnote thereon.

Scrop. Le roy dona le maner de faugenham a Iohan de Moun dount les tenements qe Auues tynt en est pareele et membre saulf a luy les fees et les auowesons ore vous dit ele qe ele fit le homage al roy et demoert le tenaunt le roy mes qe le prior ait la rente ele nest mie sa tenaunt mes le tenaunt le roy.

Wilghby. Le maner est tenu de fee le roy partie et partie de fee Iohan pamele ore vous dioms qe ceo est du fee Iohan pamel et nient du fee le roy prest del auerer.

Denom. Hors de son fee prest etc.

Et alii econtra.

39. WICKHAM v. THE ABBOT OF CIRENCESTER.¹

De dreit secundum consuetudinem.

Thomas de Bourtone de Wikkam porta son bref de dreit secundum consuetudinem manerii en la court sire Eymer de Valence et Iohan de T. en satersam et demaunde vne carue de tere en meyme la vile uers le abbe de Cicester ou labbe vint et dit qe il auoit ceux tenementz qe fuerent en demaunde du doun les auncestres le roy et de ceo mist il auaunt chartre le roy Henry par qey les tenements il dit qe fuerent en demaunde passaient et demaunda iugement si de tenements issint donez en celle court del auncien demeyn deueroyent mener en iugement pur quele cause sa parole fut remue ey en court en auoms iour ore vous auez cy Thomas qy prest est a defayre celle cause si le abbe la mayntegne et remuer son play a la court ou il est pledable.

Berr. Nous tendrons ceo plee si bien com ils feireynt en le auncien demeyne.

Migg. Oyl sire si ceo fut qe la parole fut nenuz eyenz par default de ceux de la court.

Scrop. Veez cy la chartre le roy Henry par qey les tenementz passaient. Et fut la chartre tiele par qey il auoit done Sciatis me ex laudacione episcoporum archiepiscoporum abbatum priorum comunium et baronum dedisse abbati et monachis etc. ecclesiam de Cireestre una cum duabus carucatis terre in sathersam et iiij. carucatas

¹ Reported by *H.* Names of the parties from the Plea Roll, where the plaintiff is called Thomas of Wickham of Burton, and not as above in the report.

Scrope. The King gave the manor of Fangenham,¹ of which the tenements which Avice holdeth are parcel and member, to John of Moun, reserving to himself the fees and advowsons. Avice now telleth you that she did homage to the King and that she remaineth the King's tenant; and, though the Prior hath the rent, she is not his tenant, but the King's tenant.

Willoughby. The manor is holden partly of the King's fee and partly of the fee of John Pamele. We now tell you that these tenements are of the fee of John Pamele and not of the King's fee. Ready to aver it.

Denham. Not within his fee, ready etc.

And issue was joined.

39. WICKHAM v. THE ABBOT OF CIRENCESTER.²

Writ of right according to the custom of the manor.

Thomas of Burton of Wickham brought his writ of right according to the custom of the manor in the Court of Sir Aymer of Valence and John of T. in Shrivenham and claimed a carucate of land in the same vill against the Abbot of Cirencester; whereupon the Abbot came and said that he had the tenements that were claimed of the gift of the King's ancestors; and in witness thereof he proffered a charter of King Harry by which, he said, the tenements claimed passed; and he asked judgment whether tenements so given ought to come into judgment in that Court of ancient demesne; and on that argument the hearing was removed into Court here, and we have a day now. You have Thomas here who is ready etc. to show cause against the removal, if the Abbot maintaineth it, and why his plea should be moved back into the Court where it is [properly] pleadable.

BEREFORD C.J. We are as competent to hold that plea as they are in the ancient demesne.

Miggeley. Agreed, sir, if the hearing had come here by the default of those of the Court [of ancient demesne].

Scrope. See here the charter of the King Harry by which the tenements passed.—And the charter by which the King had granted was as here followeth: 'Ye are to know that with the approval of the Bishops, Archbishops, Abbots, Priors, Commons and Barons I have given to the Abbot and Monks etc. the Church of Cirencester together with two carucates of land in Shrivenham and four carucates of land

¹ I cannot identify this manor. The lands of the abbey are named in Edward III.'s charter of confirmation, printed

in Dugdale's *Monasticon*, vi. 427.

² See the Introduction, p. li above.

[sic] terre in Wikkam etc. simul [?] cum dena [sic] parte tolonii in Circestre et alus [sic] et nentendoms pas dil hure qe ceux tenements passaient par la chartre le roy qe lur fete de fraunk fee qe ils soient pledables sulom les vsages del auncien demeyn.

Migg. Les tenements qe sount en demaunde nient compris en la chartre le roy prest etc.

Denom. Sire nous auoms dit qe nous clamoms a tenyr ceux tenements cum apendaunt a nostre Eglise de Hecham com du dreit de nostre Eglise de Circestre nostre predecessour fut seisi com apendaunt a la eglise auaunt dit et touz les predecessours puy le tens le roy Henry qe dona et issi clamons nous a tenyr ceuz tenements com apendaunt a la dit eglise quele eglise od les apendaunces passa par my la chartre le roy Henry et demaundoms iugement si a tiel auerement devez auenir a dire qe nient compris. *Et de autre part* nous auoms nostre cause par taunt com nous dioms qe nous le clamons a tenyr com du doun les aunecestres le roy.

Migg. Vostre chartre nel fet mie apendaunt nous uoloms auer qe il nest pas apendaunt et issi nient compris.

Berr. Il vous ad dite qe son predecessour fut seisi de ceux tenements com apendaunt a sa eglise de Wikham et touz ses predecessours puy le tens le roy Henry qy ceste eglise dona od tutez apendices dittez luy dunk pur qey ceo nest mie apendaunt.

Migg. Nous voloms auer qe il nauoit nunkes rienz en les tenements si noun puy la disseisine qe son predecessour a qy le roy dona les terres de schiuenham de ceo enfit a nostre aunecestre et qe tuz tens deuaunt taunke il nous disseisa nos aunecestres tindrent ceux tenementz en le auncien demeyn.

Denom. Nous dioms qe le roy dona entierment les teremens de scheueriham en demayn et en seruice a nostre predecessour et dioms qe tut tens puy auoms tenuz ceste terre par la chartre le roy en demayne et en seruice en fraunk augmoynes.

Toudchy. Il poet estre qe le roy nous dona les seruices et qe le tenaunt fit felonie par qey il entra com en sa eschete et si est il compris deynz le doun le roy com membre de apendaunce del eglise de schiuenenham [sic] et com du dreit de sa eglise de Circester.

in Wickham etc. together with a tithe of the toll in Cirencester and elsewhere.'—And seeing that these tenements passed by the King's charter which made them frank fee they are pleadable under the custom of ancient demesne.

Miggeley. The tenements claimed are not comprised within the King's charter, ready etc.

Denham. Sir, we have said that we claim to hold these tenements as appendant to our church of Hagborne as of the right of our church of Cirencester. Our predecessor was seised of them as appendant to the aforesaid church, and all his predecessors since the time of the King Harry who gave them; and so we claim to hold these tenements as appendant to the said church [of Cirencester], which church, together with the appendancies, passed by the charter of the King Harry; and we ask judgment whether you ought to get to such an averment as to say that they are not comprised [within the King's charter]. And, moreover, we have good cause in what we have said that we claim to hold as of the gift of the King's ancestors.

Miggeley. Your charter doth not make them appendant. We will aver that they are not appendant and so not comprised.

BEREFORD C.J. The Abbot hath told you that his predecessor was seised of these tenements as appendant to his church of Wickham, and all his predecessors since the time of the King Harry who gave them this church with all its appendancies. Tell him, then, why these are not appendant.

Miggeley. We are ready to aver that he never had aught in the tenements save after the disseisin which his predecessor to whom the King gave the lands of Shrivenham¹ did of it to our ancestor, and that always before he disseised us our ancestors held these tenements in the ancient demesne.

Denham. We say that the King gave the whole of the tenements of Shrivenham in demesne and in service to our predecessor, and we say that we have held this land in demesne and in service in free alms ever since by the King's charter.

Toudeby. It may be that the King gave us the services and that the tenant committed felony whereby the Abbot entered as into his escheat, and so it is comprised within the King's gift as part of the appendancies of the church of Shrivenham and as of the right of his church of Cirencester.

¹ 'In Barchesira ecclesiam de Seriveham cum terra et capellis et decimis et omnibus consuetudinibus eidem ecclesie pertinentibus. . . . Hacheburnau cum xi hidis et iii virgatis terrae et ecclie-

siam eiusdem villae [sciatis me dedisse].'
—Edward III.'s charter confirming that of Henry I. (Dugdale's *Monasticon*, vi. 177).

Malb. Nous voloms auerer qe ceo est del auncien demeyne et noun pas fraunk fee ne compris deynz la chartre.

Berr. A cest auerement ne auendrez qar si le roy dona la terre de scheuenham en demayn et en seruice al abbe issi qe par le doun le roy le abbe fut seisi des seruices si le abbe fut auenuz al soile a droit ou a tort et le abbe fut tenaunt en demayn et en seruice puyz le doun qe le roy fit coment auendrez vous a dire qe les tenements fuerent del auncien demayn ou tenuz de sire Eymer de Valence Iohan de Wilningtone et Thomas dautrune et pledables sulom les vsages del auncien demayn.

Et hoc fuit dictum pur ceo qe *Malb.* tendit daucrer qe les tenements estoient pledables sulom etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 243, Berkshire.

Preceptum fuit vicecomiti quod assumptis secum quatuor discretis et legalibus militaribus de comitatu suo in propria persona sua accederet ad hundredum Ademari de valencia Comitis Pembrochie Iohannis de Willington et Thome de alta Ripa de Shryuenham et in pleno hundredo illo recordari faceret loquelam que est in eodem hundredo per breue Regis de Recto clausum inter Thomam de Wykham de Burghtone petentem et Abbatem de Cyrencestre tenentem de vno messuagio et duabus virgatis terre cum pertinenciis in Burghtone Et recordum illud haberet hic ad hunc diem sub sigillo etc. et sigillis quatuor legalium hominum eiusdem hundredi ex illis etc. Et partibus eundem diem prefigeret etc. Quia predictus Abbas clamat tenere tenementa predicta per cartam domini Henrici quondam Regis Anglie progenitoris nostri in liberam et perpetuam elemosinam per quod loquela illa per legem communem et non secundum consuetudinem manerii predicti deduci debet. Et modo veniunt partes predictae per attornatos suos post prefixionem etc. Et Thomas dicit quod qualitercunque predictus Abbas suggessit in Cancellaria domini Regis per cartam suam predictam supponentem predicta tenementa esse liberam Elemosinam et ad communem legem etc. eadem tenementa sunt de antiquo dominico Corone domini Regis et semper hucusque fuerunt placitanda in prefata curia secundum consuetudinem manerii predicti et non alibi etc. Et petit quod loquela inde non deducatur in Curia hic Immo quod reuertatur in statu quo prius etc.

Et Abbas afirmando cartam suam predictam dicit quod ipse tenet predicta tenementa in liberam et perpetuam elemosinam ad communem legem etc. per cartam predicti Henrici Regis patris Regis Ricardi progenitoris domini Regis nunc quam profert et que testatur quod Idem Henricus Rex inter ceteras donaciones quas fecit ecclesie beate Marie Cyrencestreensis cuius

Malberthorpe. We are ready to aver that these tenements are of the ancient demesne and not frank fee nor comprised within the charter.

BEREFORD C.J. You will not get to that averment, for if the King gave the land of Shrivenham in demesne and in service to the Abbot, so that the Abbot was seised of the services by the King's gift, and so that if the Abbot got possession of the soil, whether rightly or wrongly, he was tenant in demesne and in service from the time of the King's gift, how are you going to say that the tenements were of the ancient demesne or were holden of Sir Aymer of Valence, John of Wilmington and Thomas Dautrive and are pleadable under the customs of the ancient demesne?

And this was said because *Malberthorpe* wanted to aver that the tenements were pleadable according to etc.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 243, Berkshire.

Command was given to the Sheriff that he himself should go, taking with him four discreet and law-worthy knights of his county, to the hundred court of Aymer of Valence, Earl of Pembroke, John of Willington and Thomas Dautrive of Shrivenham, and there in that full hundred court cause to be recorded the plea which is in that same hundred court by the King's writ of right close between Thomas of Wickham of Burton, plaintiff, and the Abbot of Cirencester, tenant, of a messuage and two virgates of land, with the appurtenances, in Burton, and to have that record here on this day under the seal etc. and the seals of four law-worthy men of the same hundred of those etc., and to appoint the same day to the parties etc., because the aforesaid Abbot doth claim to hold the aforesaid tenements by a charter of the lord Harry, aforetime King of England, our ancestor, in free and perpetual alms, wherefore that plea ought to be tried by the common law and not according to the custom of the aforesaid manor. And now the aforesaid parties come by their attorneys on the appointed day etc. And Thomas saith that notwithstanding whatever the aforesaid Abbot suggested in the Chancery of the lord King on the ground that his aforesaid charter supposed that the aforesaid tenements were free alms and subject to the common law etc., the same tenements are of the ancient demesne of the Crown of the lord King, and have ever up to now been pleaded in the aforesaid Court according to the custom of the aforesaid manor and not elsewhere etc. And he asketh that the plea thereof should not be removed into the Court here, but, on the contrary, be sent back *in statu quo prius* etc.

And the Abbot doth affirm his aforesaid charter and saith that he himself doth hold the aforesaid tenements in free and perpetual alms under the common law etc. by the charter of the aforesaid King Harry, father of King Richard, progenitor of the lord King that now is, which charter he doth tender and which witnesseth that the same King Harry, amongst other gifts which he made to the Church of Blessed Mary of Cirencester, of which

Note from the Record—continued.

fundator extitit dedit cuidam Serloni primo Abbati eiusdem ecclesie et successoribus suis et canonicis regularibus ibidem deo seruientibus imperpetuum ecclesiam de Shryuenham cum terra et capellis et decimis et omnibus consuetudinibus eidem ecclesie de Shryuenham pertinentibus et Dicit quod Burghtone est hamelettus ville de Shryuenham et quod ipse tenet predicta tenementa in Burghtone que sunt parcella et de pertinenciis terre ipsius ecclesie de Shryuenham supradicte vt de Iure ecclesie sue beate Marie Cyrencestre tanquam liberam elemosinam et ad communem legem per cartam predictam de domino Rege que tenet cum suis pertinenciis ipse et predecessores sui Abbates loci predicti tenuerunt de ipso Rege et progenitoribus suis in dominico et in seruicio hucusque a tempore confeccionis predicte carte tanquam libera elemosina in forma predicta etc. Et ea racione quod predicta tenementa sunt parcella et de appendiciis terre ipsius ecclesie in predicta carta contente vt predictum est tenementa illa in Curia Domini Regis hic sunt placitabilia ad communem legem et non in predicto hundredo in Curia ipsius Ademari et aliorum participum de quibus tenementis illa non tenentur nec de eorum feodo existunt per predictum breue clausum Et ex quo predictus Thomas presens hic in Curia nichil dicit uersus ipsum Abbatem petit Iudicium etc.

Et Thomas dicit quod predicta tenementa non sunt parcella siue de pertinenciis predicte terre in carta contente Immo dicit quod tam tenementa illa quam alia quecunque in Burghtone quod est membrum predicti manerii de Shryuenham et quod est de antiquo dominico etc. semper hucusque placitari consueuerunt infra Idem manerium de Shryuenham per paruum breue de Recto secundum consuetudinem eiusdem manerii et non alibi Dicit insuper quod cum predictus Abbas alleget seisinam suam et predecessorum suorum a tempore confeccionis carte predicte quod est ante tempus memorie de predictis tenementis vt de parcella etc. continuatam antecessores ipsius Thome tenuerunt continue predicta tenementa de antecessore in antecessorem a tempore memorie vsque tempus Regis Henrici aui Domini Regis nunc tempore cuius quidam Thomas Abbas Cyrencestrie predecessor etc. iniuste et sine Iudicio disseisiuit quendam Willelmum auum istius Thome nunc cuius heres ipse est de eisdem tenementis Ita quod nullus predecessor predicti Abbatis vnquam ante tempus predicte disseisine facte fuerunt in seisina de predictis tenementis quam quidem disseisinam ipse paratus est verificare per predictum breue de recto clausum et Ius suum ostendere infra Idem manerium sicut debuerit secundum consuetudinem eiusdem unde petit sicut prius quod loquela ista retornetur etc. Postea predictus Thomas non est prosecutus Ideo predictus Abbas inde sine die et predictus Thomas et plegii sui de proseguendo in misericordia. Querantur nomina plegiorum etc.

Note from the Record—continued.

he was the Founder, did give to a certain Serlo, first Abbot of the same Church, and to his successors and to the canons regular therein serving God, the Church of Shrivenham, together with the land and chapels and tithes and all customs appurtenant to the same Church of Shrivenham, for ever; and he saith that Burton is a hamlet of the vill of Shrivenham, and that he himself holdeth the aforesaid tenements in Burton, which are parcel and appurtenances of the land of that church of Shrivenham aforesaid, as of the right of his Church of the Blessed Mary of Cirencester in free alms and under the common law by the aforesaid charter of the lord King, which, together with their appurtenances, he himself holdeth, and his predecessors, Abbots of the aforesaid place, have held of the King himself and of his progenitors in demesne and service up to now from the time of the making of the aforesaid charter as free alms after the aforesaid form etc. And because the aforesaid tenements are parcel and of the appendancies of the land of the said Church which are comprised within the aforesaid charter, as is aforesaid, those tenements are pleadable in the Court of the lord King here under the common law, and not in the aforesaid hundred court of the said Aymer and the other parceners, of whom those tenements are not holden nor are they of their fee, by the aforesaid writ of right close. And seeing that the aforesaid Thomas, who is present here in Court, saith naught against him, the Abbot, he asketh judgment etc.

And Thomas saith that the aforesaid tenements are not parcel nor are they of the appurtenances of the aforesaid land comprised within the charter. On the contrary, he saith that as well those tenements as all other tenements in Burton, which is a limb of the aforesaid manor of Shrivenham and is of the ancient demesne etc., were ever used up to now to be pleaded within the same manor of Shrivenham by the little writ of right according to the custom of the same manor and not elsewhere. He saith further that whereas the aforesaid Abbot doth allege continuous seisin of the aforesaid tenements as of a parcel etc. by himself and his predecessors from the time of the making of the aforesaid charter, which is before the time of memory, the ancestors of him, Thomas, did [in fact] hold the aforesaid tenements without discontinuance from ancestor to ancestor from the time of memory down to the time of King Harry, grandfather of the Lord King that now is, in whose time a certain Thomas, Abbot of Cirencester, predecessor etc., unjustly and without a judgment disseised a certain William, grandfather of this Thomas [the present plaintiff], whose heir this Thomas is, of the same tenements, so that no predecessor of the aforesaid Abbot was ever in seisin of the aforesaid tenements before the time of the commission of the said act of disseisin, which disseisin he, Thomas, is ready to aver by the aforesaid writ of right close and to prove his right within the same manor according to the custom of the same as he was entitled to do, and he therefore asketh as before that this plea be sent back etc. On a later day the aforesaid Thomas failed to prosecute his plea. So the aforesaid Abbot is to go away hence without day, and the aforesaid Thomas and his pledges for prosecution are in merey. The names of the pledges etc. are to be inquired of.

40. GREETHAM v. LUNG.¹I.²

De recto ou recouerer par vn bref de cessauit fut allegge.

Nota qe la ou Iohan porta bref de dreit en la court le Roi vers vn .S. et demaunda certeynz tenementz de la seisine son Auncestre le tenaunt dit qe acc'ioun vers luy en dreit de ceux tenementz ne put il auer qe nous vous dioms qe auant ces hures deuant celes Iustices portames le cessauit vers mesmes ceux par qei nous recoueroms par iugement pur ceo qe vous ne tendites pas le arrerages deinz lan qel iugement est vnkore en sa force et demaundoms iugement.

Denom. Il couent qe vous mettez vostre respouns plus en certeyn et ditez par qel iugement le tenant perdi.

[] Par defaute apres defaute.

Denom. Nentendoms pas qe cel recouerer nous serra barre a nostre accioun desicom il vnt conu qe iugement se tailla sour la defaute ou il ne pledera rien en le dreit et demaundoms iugement si ore a cest bref de dreit qest de plus haut nature non obstante cel defaute ne deyuent il respoudre.

Et furent aiornez en leyndemeyn a qel iour—

Frisk. demaund coment il le voleit auer qe iugement se tailla sour la defaute.

Lautre. Par recorde.

Frisk. Nul tel recorde prest etc.

Et [alii] econtra.

II.³

De dreit.

Iohan Sousse porta son bref de dreit vers Wauter le Molinens et demaunda certein tenement et counta de sa seisine demeyn seisi en le tens le roy Edward pier etc.

Toudeby. Wauter de [sic] Molineus porta vn bref de cessauit en cest court uers cely Iohan et recouerit par iugement par qey nous nentendoms qe il accioun poet accioun [sic] auer.

Denom. Par quel iugement ou par defaute ou par final iugement.

Toudeby. Chescun iugement en cessauit est final qar si le tenaunt ne vygne deuant iugement rendu prest a rendre les arrerages les

¹ Reported by *D.* *H* and *M.* Names of the parties from the Plea Roll.

² Text of (I) from *D.* ³ Text of (II) from *H.*

40. GREETHAM v. LUNG.

I.

Writ of right where it was alleged that the tenements had been recovered by the tenant by a writ of *cessavit*.

Note that when John brought a writ of right in the King's Court against one S. and claimed certain tenements of the seisin of his ancestor, the tenant said that the plaintiff could not have any right of action against him in respect of those tenements, for we tell you that before now we brought the *cessavit* before these Justices against this same plaintiff, and we recovered by it by judgment because you did not tender the arrears within the year¹; and that judgment is still in force, and we ask judgment.

Denham. You ought to make your answer more complete and say by what judgment the tenant lost.

[] By default after default.

Denham. We do not think that that recovery will bar us from our action since they have admitted that that judgment was given upon [the tenant's] default, and that the plaintiff did not plead in the right: and we ask judgment whether he ought not to answer now to this writ of right which is of a higher nature, notwithstanding that default.

And they were adjourned till the morrow, on which day—

Friskenev asked how the plaintiff wanted to aver that judgment was given upon default.

The other side. By record.

Friskenev. No such record, ready etc.

And issue was joined.

II.

Writ of right.

John Sousse brought his writ of right against Walter the Molyneux and claimed a certain tenement, and counted of his own seisin, seised in the time of the King Edward, father etc.

Toudeby. Walter the Molyneux brought a writ of *cessavit* in this Court against John and recovered by judgment, and therefore we do not think that John can have any action.

Denham. By what judgment? By default or by final judgment?

Toudeby. Any judgment in a *cessavit* is final, for if the tenant do not come before judgment rendered, ready to pay the arrears, he

¹ This is probably a copyist's mistake. The *cessavit* could not be brought until two years' rent was in arrear.

tenements sount encoruz a remenaunt issi qe si nul iugement sei face il est final et nous alleggoms vn iugement qe fusset pur nostre estat mayntener.

III.¹

De Recto fut allege vne recouerir par bref de cessauit.

Vn A. porta bref de dreit vers B. et demaunda certaines tenementz en B. et counta de la seisine son auncestre fessaunt la descente tauntqe a ly et en afirmaunt cel tendy suyte et derreyn bone.

Herle. Lan de Regne etc. qore etc. nous portames vn bref de cessauit vers uos mesmes en ceste court deuaunt sire W. de Bereford etc. ou nous recouerames mesmes les tenementz par iugement de la court et demaundoms iugement si vous poussez en ceuz tenementz rien demaunder.

Denoum. Par quel iugement.

Herle. Nous ne auoms mester a dire kar le quel qe ceo seit sur defaute ou sur principal vncore estes vous barre qe estat le iugement qe dit qe si le tenaunt ne viegne auant iugement rendu et tende etc. qe les tenementz soient encorus a remenaunt.

Berr. Et depus qe lun et lautre barre pur quei vous greue a dire par quel iugement.

Herle dit de gree qe par defaute apres defaute.

Denoum. Nous enparleroms et reuynt et dit qyl ny auoit nul tiel play prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 363d., Lincolnshire.

Hugo de Gretham per Nicholaum de Beltone attornatum suum petit versus Osbertum Le Lung vnum messuagium cum pertinenciis in Suburbio Lincolnie vt Ius etc. per breue de Recto patens. Et vnde idem Hugo dicit quod ipsemet fuit seiscitus de predicto messuagio in dominico suo vt de feodo et Iure tempore pacis tempore domini Edwardi Regis patris domini Regis nunc capiendo iude explicas ad valenciam etc. Et quod tale sit Ius suum offert etc.

Et Osbertus per Ricardum filium Osberti attornatum suum venit. Et dicit quod predictus Hugo nichil Iuris clamare potest in predicto messuagio quia dicit quod ipse alias in Curia domini Edwardi Regis patris domini Regis nunc coram Iohanne de Metingham et sociis suis Iusticiariis hic in

¹ Text of (III) from *M*.

is barred for ever from recovering ; and so any judgment is a final one, and we allege a judgment which was given in maintenance of our estate.

III.

Writ of right, where the tenant alleged that he had recovered by a writ of *cessavit*.

One A. brought a writ of right against B., and claimed certain tenements in B., and counted of the seisin of his ancestor, making the descent down to himself, and tendered good suit and proof in witness thereof.

Herle. In the year of the reign etc. that now is, we brought a writ of *cessavit* against you yourself in this Court before Sir W. of Bereford etc., under which we recovered these same tenements by judgment of the Court, and we ask judgment whether you can claim aught in these tenements.

Denham. By what judgment ?

Herle. It is not incumbent upon us to say, for whether it were given on default or on the principal issue you are barred all the same, for the statute¹ warranting the judgment saith that if the tenant do not come before judgment rendered and tender etc. he is barred for ever from claiming the tenements.

BEREFORD C.J. But since either the one judgment or the other barreth him, how would it harm you to say by what judgment ?

Herle readily said that it was on default after default.

Denham. We will imparl—and when he came back he said that there was no such plea, ready etc.

And issue was joined.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207). r. 363d., Lincolnshire.

Hugh of Greetham by Nicholas of Belton, his attorney, claimeth against Osbert the Lung a messuage with the appurtenances in the suburb of Lincoln as his right etc. by an open writ of right. And thereof the same Hugh saith that he himself was seised of the aforesaid messuage in his demesne as of fee and right in time of peace in the time of the lord Edward the King, father of the lord King that now is, taking thence esplees to the value etc. And that such is his right he offereth etc.

And Osbert by Richard the son of Osbert, his attorney, cometh, and he saith that the aforesaid Hugh can claim no right in the aforesaid messuage ; because he saith that he himself at other time in the Court of the lord Edward the King, father of the lord King that now is, before John of Metingham

¹ Statute of Gloucester, cap. iv.

Note from the Record—continued.

crastino Purificacionis beate Marie anno regni suo vicesimo quinto per iudicium eiusdem Curie recuperavit messuagium illud uersus ipsum Hugonem per defaltam etc. per quoddam breue quare cessauit per biennium etc. unde petit iudicium etc.

Et Hugo dicit quod ipse ratione predicta ab accione repelli non debet. Dicit enim quod nullum tale iudicium se fecit in prefata Curia de predicto messuagio prout predictus Osbertus superius asserit Et de hoc ponit se super Recordum Rotulorum predicti Iohannis de tempore predicto qui sunt in Thesaurio Regis etc. et Osbertus similiter. Ideo mandatum est Thesaurario et camerariis de scaccario quod scrutatis rotulis de tempore predicto transscriptum placiti predicti mittant hic a die Pasche in vnum mensem sub pede sigilli de scaccario etc.

Postea ad diem illum venit predictus Osbertus per predictum Ricardum attornatum suum et optulit se iiij^{to} die uersus predictum Hugonem de predicto placito. Et ipse non venit. Et fuit petens etc. Et nihilominus Thesaurarius et Camerarii miserunt transcriptum predicti placiti coram Iohanne de Metingham etc. hic in hec verba. Placita apud Westmonasterium coram Iohanne de Metingham et sociis suis Iusticiariis domini Regis de banco in Octabis sancti hillarii anno regni Regis Edwardi filii Regis Henrici vicesimo quinto. Lincolnie Osbertus Le Longge per attornatum suum optulit se iiij^{to} die uersus Radulfum Page de Lincolne de placito vnius messuagii cum pertinenciis in Suburbio Lincolnie Et uersus Hugonem de Gretham de placito vnius messuagii cum pertinenciis in eodem suburbio que clamat vt Ius etc. Et ipsi non veniunt. Et alias fecerunt defaltam scilicet a die sancti Michaelis in tres septimanas proximo preterito Ita quod tunc preceptum fuit vicecomiti quod caperet predicta tenementa in manum Regis etc. Et diem etc. Et quod summoneret eos quod essent hic ad hunc diem etc. Et vicecomes modo maudat diem capcionis et quod summonuisset etc. Ideo consideratum est quod predictus Osbertus recuperet inde seisinam suam uersus eos per defaltam. Et Radulfus et Hugo in misericordia. Et quia predictus Hugo non sequitur Ideo predictus Osbertus inde sine die et predictus Hugo et plegii sui de proseguendo in misericordia querantur nomina plegiorum etc.

41. ANON.¹

Detenue de chartre.

Cecile de Bar. porta vn bref de detenue de vne chartre vers William de .S. et dit qe ele luy bailla vne chartre en qey fut contenu vne place de tere de son doun demeyn a rendre luy a vne certain terme quaunt

¹ Reported by H.

Note from the Record—continued.

and his companions, Justices here, on the Morrow of the Purification of Blessed Mary in the twenty-fifth year of his reign, did recover by judgment of the same Court that messuage against this Hugh by default etc. by a certain writ of *quare cessavit per biennium* etc., and he asketh judgment of this etc.

And Hugh saith that he ought not to be barred from his action for the aforesaid reason; for he saith that no such judgment as the aforesaid Osbert doth allege above was given of the aforesaid messuage in the aforesaid Court. And as to this he putteth himself on the record of the rolls of the aforesaid John of the aforesaid time, which rolls are in the King's Treasury etc.; and Osbert doth the like. An order is therefore sent to the Treasurer and Chamberlains of the Exchequer to search the rolls of the aforesaid time and send a transcript here of the aforesaid plea under the foot of the seal of the Exchequer a month after Easter.

Afterwards on that day the aforesaid Osbert came by the aforesaid Richard, his attorney, and offered himself on the fourth day against the aforesaid Hugh of the aforesaid plea. And Hugh did not come; and he was the claimant etc. And, further, the Treasurer and Chamberlains sent here the transcript of the aforesaid plea before John of Mettingham etc. in these words: 'Pleas at Westminster before John of Mettingham and his companions, Justices of the Bench of the lord King, in the octaves of St. Hilary in the twenty-fifth year of the reign of King Edward the son of King Harry. Lincoln. Osbert the Long by his attorney offered himself on the fourth day against Ralph Page of Lincoln of a plea of a messuage with the appurtenances in the suburb of Lincoln, and against Hugh of Greetham of a plea of a messuage with the appurtenances in the same suburb, which he claimeth as his right etc. And they do not come. And they made default at other time, to wit, three weeks after Michaelmas Day last past, so that the Sheriff was then commanded to take the aforesaid tenements into the King's hand etc. and the day etc., and to summon them to be here on this day etc. And the Sheriff doth now return the day of the taking etc. and that he had summoned etc. It is therefore considered that the aforesaid Osbert do recover his seisin thereof against them by default. And Ralph and Hugh are in mercy.' And because the aforesaid Hugh doth not prosecute his claim, the aforesaid Osbert is to go away hence without day, and the aforesaid Hugh and his pledges for prosecution are in mercy. The names of the pledges are to be inquired of etc.

41. ANON.

Detinue of charter.

Cecily of B. brought a writ of detinue of charter against William of S. and said that she bailed to him a charter containing a grant by herself of a plot of land, which charter was to be returned to her at a

ele ly demaundereit ele vint souent et demaunda la chartre il rendre dedit et unkor fet as damages.

Prill. Sire nous vous dioms qe nous auoms de bayle ceste cecile et vn iames en ceste maner a tenyr qe si cecile soefresit iames tenyr vne acre de tere et qe il auoit de son lees taunke la fine de treis aunz adunk serroit la chartre baille a cecile et si cecile engettat iames deenz le terme qe adunk serroit la chartre deliure a iames le terme nest pas unkor fine et si vous ueez qe la chartre deiue estre deliure a luy soule einz qe la condicioun seit parfourmi veez cy la chartre a fere tut qe la court agardera.

Migg. Vous auez conu le baile receu et detenu mes vous alleggez vn couenaunt vne condicioun en proue de quele condicioun ne couenaunt vous ne moustrez nule especialte demaundoms iugement et prioms nostre chartre et nos damages.

42. NOTA.¹

In quodam scripto reddendo si le defendant die qil ad lescrit del baile le pleyntif et de vn altre a tenir en ouel meyn etc. et prie bref de faire venir celuy sil sace rien dire pur qey lescrit ne luy serra deliuers et si le defendant ne syue pas le bref de faire luy venir a meyntenir son respouns le pleyntif auera iugement en le principal et reconera cez damages.

43. WACEVILLE v. THORPE AND LEECH.²

La ou Robert de Waceuille et Alice sa femme porterent vn bref vers Martin de Thorp et Edmund le Leche le quex plederent a enqueste aueyent iour a quel iour Edmund vint en Court et renua cez attornez et puis mesme le iour furent demandez Martin vint et Edmund fist defaute et fu sa presence recorde des Iustices quant il renua cez attornez et aueyent iour outre taunke a lendemeyn et furent les parties demaundez Martin ne Edmund ne vindrent pas Robert et Alice prirent seisine de terre pur ceo qil furent venuz en Court et departirent en despit de la Court et rien ne fu fait forke vn petit cape agarde mes les Iustices diseient qil ne poeyent mye allegger enprisonment quant a cel iour.

¹ Noted by E. ² Noted by E. Names of the parties from the Plea Roll.

certain term when she should ask him for it. She often went and asked for the charter, which he refused to return and still doth refuse to her damages.

Prilly. Sir, we tell you that it was bailed to us by this Cecily and one James after this fashion, to hold it if Cecily should allow James to hold an acre of land and to have it by her lease until the end of three years, when the charter was to be returned to Cecily; but if Cecily ejected James within the term then the charter was to be delivered to James. The term is not yet ended, and if you be of opinion that the charter should be delivered to Cecily alone before the condition is performed, here is the charter, to be done with as the Court shall direct.

Miggeley. You have admitted receiving the charter in bail and detaining it, but you allege a covenant [and] a condition, and you show no specialty in witness of either the condition or the covenant. We ask judgment and pray our charter and our damages.

42. NOTE.

If, in a writ brought to recover a certain writing, the defendant say that he hath the writing by the bailment of the plaintiff and of another to hold in neutral hand etc., and [the plaintiff] pray a writ to make that other come if he can say aught why the writing should not be delivered, and if the defendant do not sue out a writ to make him come and support his [the defendant's] answer, the plaintiff shall have judgment on the principal issue and shall recover his damages.

43. WACEVILLE *v.* THORPE AND LEECH.

When Robert of Waceville and Alice his wife brought a writ against Martin of Thorpe and Edmund the Leech, who pleaded up to the inquest, they had a day; and upon that day Edmund came into Court and removed his attorneys, and then, on the same day, the parties were called. Martin came and Edmund made default, and his presence when he removed his attorneys had been recorded by the Justices. They had a day over on the next day, and the parties were called. Neither Martin nor Edmund came. Robert and Alice prayed seisin of the land because Martin and Edmund had been present in Court and had gone away in contempt of the Court, but all that was done was to order a little *cape* to issue, for the Justices said that they could not send them to prison in respect of that day.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207), r. 340, Norfolk.

Robertus de Waceulle et Alicia vxor eius alias scilicet a die Pasche in vnum mensem anno regni domini Regis nunc sexto petierunt in Curia hic uersus Martinum de Thorpe et Edmundum le Leche vnum messuagium Centum et triginta acras terre et duodecim acras prati cum pertinentiis in Bichamwelle Shengham et Bertone Binnediche vt Ius ipsius Alicie etc. de dono Nicholai de Cressingham qui ipsam Aliciam inde feoffauit Et in que iidem Martinus et Edmundus non habent ingressum nisi per Willelmum Howard quondam virum ipsius Alicie qui illa eis dimisit cui ipsa in vita sua contradicere non potuit etc. Qui quidem Martinus et Edmundus tunc venerunt in Curia et placitaverunt cum predictis Roberto et Alicia Et dixerunt quod ipsi non habuerunt ingressum in predictis tenementis per predictum Willelmum quondam virum etc. Immo per ipsam Aliciam antequam ipsa eidem Willelmo extiterat disposata etc. Et posuerunt se hinc inde in Iuratam patrie etc. Ita quod continuato processu hinc inde vsque ad hunc diem scilicet in Octabis Sancti Martini per Iuratam inde inter eos positam in respectum. Ita quod predictus Edmundus venit in Curia hic die Iouis videlicet quarto die post predictas Octabas Sancti Martini et amouit Robertum de Shuldham et Willelmum de Cremplesham quos prius loco suo posuerat uersus predictos Robertum et Aliciam de placito terre vt patet in rotulis attornatorum eiusdem termini rotulo xxj. Et postea eodem quarto die iidem Robertus et Alicia optulerunt se uersus predictos Martinum et Edmundum de predicto placito. Et Martinus venit et similiter Iuratores etc. Et predictus Edmundus tunc non venit Ita quod super hoc dies datus fuit ipsis Roberto et Alicie et similiter predicto Martino et Iuratoribus die veneris in Crastino etc. quo die predicti Robertus et Alicia optulerunt se uersus predictos Martinum et Edmundum de predicto placito. Et ipsi non veniunt. Iudicium predicta tenementa capiantur in manum domini Regis Et ipsi summoncantur quod sint hic In Crastino Purificationis beate Marie per Willelmum de Bereforde audituri inde iudicium suum etc.

44. NOTA.¹

Vn cui in vita fu porte vers vn tenaunt la femme se noma A. la file Robert etc. et pur ceo qe ele ne se noma mye feme le baroun qe aliena le bref se abaty.

¹ Noted by E.

Note from the Record.

De Banco Roll, Mich., 8 Edw. II. (No. 207). r. 340. Norfolk.

Robert of Waceville and Alice his wife did at other time, to wit, a month after Easter in the sixth year of the reign of the lord King that now is, claim in Court here against Martin of Thorpe and Edmund the Leech a messuage, a hundred and thirty acres of land and twelve acres of meadow, with the appurtenances, in Beechamwell, Shingham and Berton Binnediche as the right of the said Alice etc. by the grant of Nicholas of Cressingham, who enfeofed the said Alice thereof, and into which the same Martin and Edmund had not entry save through William Howard, aforetime husband of the same Alice, who demised them to them, the which William the said Alice could not in his life-time oppose etc. The said Martin and Edmund then came into Court and pleaded with the aforesaid Robert and Alice, and they said that they had not entry into the aforesaid tenements through the aforesaid William, aforetime husband etc., but, on the contrary, through this same Alice before she was espoused to that same William etc. And of this they put themselves on a jury of the country etc. Process therein being continued by the respiting of the jury put between them from that time until this day, to wit, a day in the octaves of St. Martin, the aforesaid Edmund now therefore cometh into Court here on the Thursday, that is the fourth day after the aforesaid octave of St. Martin, and removed Robert of Shouldham and William of Crimplesham, whom he had aforetime put in his place against the aforesaid Robert and Alice in a plea of land, as doth appear on the twenty-first roll of the rolls of attorneys of the same term. And afterwards on the same fourth day the same Robert and Alice offered themselves against the aforesaid Martin and Edmund of the aforesaid plea. And Martin came and likewise the jurors etc. And the aforesaid Edmund did not then come, so that upon this a day was given to the said Robert and Alice and likewise to the aforesaid Martin and the jurors on the Friday that was the morrow etc., on which day the aforesaid Robert and Alice offered themselves against the aforesaid Martin and Edmund of the aforesaid plea. And Martin and Edmund do not come. Judgment was given by WILLIAM of BEREFORD C.J. that the aforesaid tenements were to be taken into the King's hand and that Martin and Edmund were to be summoned to be here on the morrow of the Purification of Blessed Mary to hear their judgment thereof etc.

44. NOTE.

A *cui in vita* was brought against a tenant. The woman [bringing the claim] described herself [in the writ] as A., the daughter of Robert etc., but because she did not describe herself as wife of the husband who alienated the writ was abated.

45. CODREDE v. PURSLEYE.¹

Cosinage ou fust dit qe H. nest ville ne hamele et le bref agarde bon

En vn bref de Cosynage porte des tenemenz en Harpedone² la vewe demande—

Will. Harpedene nest ville ne hamele³ prest etc. iugement du bref.

Et pur ceo qe le tenaunt auoit demande la vewe feust agarde
⁴par *Bere*.⁵ qil deit outre etc.

46. NOTA.⁶

Nota de processu in breui de falso iudicio.

Nota la ou bref de faux iugement est porte etc. le record serra baille a iiij. syweters de la court sil voillent recorder la parole etc. sil ne voillent recorder la parole quant le viconte vint douqe serront tous les syweters destreint par bref quod dicitur distringas omnes sectatores Curie quod sint etc.

47. NOTA.⁷

Nota quod breue de vasto non iacet in socagio.

Nota par *Berr.* qe bref de Wast ne gist mye uers gardayn en sokage qar il serra echarge dil Wast par bref dacounte.

48. NOTA DE IURE DE VTRUM.⁸

Nota qen Iure de vtrum porte de vne acre [de] pree.

Lauif. Vous estes seisi de nos seruices et nostre fealte pur cel pree iugement si accioun poez auer.

*Migg.*⁹ La seisine de la rente ne nous tout mye cest Iure et quant a la fealte vnqes seisi prest dauerer¹⁰ par la Iure.¹¹

¹²*Laufer.* Seisi de nostre fealte etc.¹³ et si troue seit¹⁴ qe vnqes seisi¹⁵ nient fraunche amoygne prest etc.

Et alij econtra.

¹ Reported by *B.*, *M.*, and *X.* Names of the parties from the Plea Roll. As no reference is made in the Roll to the point noted above, the Record is not given here. Text from *B.* collated with the others. ² From *M* and *X*; *H.*, *B.* ³ *Burghe*, *M.*, *X.* ⁴⁻⁵ *X* omits. ⁶ Noted by *B.* ⁷ Noted by *B.* ⁸ Reported by *M* and *X.* Text from *M* collated with *X.* ⁹ *Toud.*, *X.* ¹⁰⁻¹¹ From *X*; etc., *M.* ¹²⁻¹³ Supplied from *X.* ¹⁴⁻¹⁵ etc., *X.*

45. CODREDE *v.* PURSLEYE.

In a writ of cosinage it was said that H. was neither a vill nor a hamlet, but the writ was upheld.

In a writ of cosinage brought of tenements in Harpenden the view was asked.

Willoughby. Harpenden is neither a vill nor a hamlet, ready etc. Judgment of the writ.

But because the tenant had claimed the view BEREฟอร์ด C.J. ruled that he must say over etc.

46. NOTE.

Note of process in a writ of false judgment.

Note that when a writ of false judgment is brought etc.¹ the record will be bailed to four suitors of the Court if they be willing to record the action etc., but if they will not record the action, then, when the Sheriff cometh, all the suitors shall be distrained by the writ which is called *distringas omnes sectatores curiae quod sint etc.*

47. NOTE.

Note that a writ of waste lieth not in socage.

Note that it was ruled by BEREฟอร์ด C.J. that a writ of waste doth not lie against a guardian in socage, for the reason that he can be made accountable for waste by a writ of account.

48. NOTE OF A JURY OF UTRUM.

Note that in a Jury of Utrum brought of an acre of meadow—*Laufer.* You are seised of our services and our fealty for this meadow. Judgment whether you can have any right of action.

Miggeley. Seisin of the rent doth not deprive us of this jury; and, as to the fealty, we are ready to aver by a jury that we were never seised of it.

Laufer. Seised of our fealty etc., and if it be found that you were never seised of it, then [we say that the meadow is] not free a'lms, ready etc.

And issue was joined.

¹ *i.e.* of the action in a manorial court of which the judgment is impugned.

49. NOTA.¹

Nota si vne femme die qele est enccynte apres la mort son baroun par qei lentiere [sic] del plus procheyn heir est destourbe ele perdra dower si ele face la conisaunce deuant Iustices etc.

¹ Noted by *M.*

49. NOTE.

Note that if a woman say [falsely] after the death of her husband that she is enceinte, whereby the next heir is disturbed, she shall lose her dower if she make the declaration before Justices etc.

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This was an assize of novel disseisin removed into the Bench *propter difficultatem*. In the previous July the present defendant, J. H., had brought an assize of novel disseisin against the present plaintiff, R. G., of the manor of N. W., with its appurtenances, and had recovered his claim by judgment. Included in the land which he had so recovered were a hundred and forty acres of woodland. R. G. by the present assize sought to recover that woodland on the ground that it did not lie within the manor of N. W., but in the vill of T., and that the Justices had acted *ultra vires* in giving judgment for the recovery of land in T. under a writ claiming land in N. W. J. H. pleaded that this assize, if allowed, would be assize upon assize, and he asked that the assize should not be allowed. He urged that it did not matter whether the woodland was in fact in N. W. or not, as it had been put in the view at the former assize, and R. G. had raised no objection at the time. The further hearing was remitted to the Justices in the country, with the instruction, so far as can be gathered from the reports and record, that if it should be proved to them that T. was not an independent vill but a hamlet of N. W. the assize should be refused; if, on the other hand, it were an independent vill, then they should proceed with the hearing of the assize.

This was an action by a writ of *quod permittat* by which the plaintiff sought to make the defendant accept and institute his presentee to the church of C. The Bishop's plea, in justification of his refusal, was that the plaintiff's father died in his, the Bishop's, homage, the plaintiff then being under age, and that the vacancy in the church occurred while the right to present was still in the Bishop, as guardian by reason of the heir's infancy. The plaintiff replied that the vacancy did not occur until he had attained his full age and the Bishop had returned to him his father's manor, to which the advowson was appurtenant. The Bishop again pleaded that the vacancy occurred before the manor passed into the seisin of the plaintiff, and issue was joined on this plea.

3. Lestrangle v. Oakover 15

L. and M., his wife, summoned by a writ of *quid iuris clamat* to declare what right they claimed in a third part of a manor which had been granted by a fine to the plaintiff, answered that they held it as of the right of M., and they claimed right and fee. The plaintiff said that L. and M. were not entitled to claim fee etc., because they held the land only for the life of one C., to whom it had been assigned in

dower before the date of the fine, and who had assigned her interest in it to M. But because this fine did not disclose the fact that the land was held by C. in dower the Court ruled that it had been improperly levied and that L. and M. should for the present go away without day, and that the plaintiff should take naught by the fine so far as that third part was concerned, but might take such steps as seemed expedient to her to purchase it to herself by some other grant, and gave order that a new fine of the other two thirds should be engrossed.

4. *Anon.* 17

In a writ of dower *unde nihil habet* the defendant pleaded that the plaintiff was already seised of a third part of the dower claimed, and then wanted to abate the writ. The Court ruled that he could not take objection to the writ after having denied that he was tenant of a parcel of that in respect of which dower was claimed.

5. *The Prior of St. Mary's, Bishopsgate, v. Havering and others* 18

The defendant seized the plaintiff's cattle, and the plaintiff brought his writ of replevin. The defendant justified the seizure as guardian of her infant son, of whom, she said, the plaintiff held land by suit and other services; and because the suit was in arrear she seized his cattle, as she was entitled to do. The plaintiff pleaded that he held by succession of title from a certain A. of W., to whom V. E., in whose seisin the tenements formerly were, had granted them in consideration of a yearly service of two shillings and sixpence for all services except the King's sentage and had bound himself and his heirs to warranty. V. E.'s heir subsequently granted the services reserved to an ancestor of the infant son of the defendant, and the plaintiff pleaded that the defendant was not entitled, as her son's guardian,

to levy distress for suit or for any other service than those reserved by V. E.'s grant. The defendant pleaded that the infant's grandfather had been seised of the suit, but could not show that his father had been seised of it, though he was claiming it at the time of his death. The Court thought that this constituted an interruption of seisin, but no judgment is reported or recorded.

6. *Kemston v. Ralph* 24

This was an assize of novel disseisin. The tenant claimed to be in seisin as the heir of his father and grandfather. The plaintiff, who was the half-brother of the tenant's father, pleaded that all through the time of the tenant's father he was in seisin of the land and continued in seisin until he was disseised by the tenant. The tenant pleaded that he was in possession as the heir of his father, to whom the tenements had descended by hereditary succession, that upon the death of his father the plaintiff had intruded himself in them while he, the tenant, was in possession, and that he had thereupon ejected him, as he was entitled to do; and he asked judgment whether he ought to be called upon to defend his title in an assize unless the plaintiff could show a definite title. Judgment was reserved.

7. *Furness v. Castle* 33

The defendant in an action for the recovery of a third part of the manor of P. vouched the reversioners to warranty, but when asked by them how they were bound to the warranty she tendered a deed by which the Bishop of D. granted her the manor of R. and bound himself and his heirs to the warranty. The vouches took the objection that the defendant had at first vouched them as reversioners and could not change the ground of her voucher and claim the warranty by a deed. When this objection was

overruled they objected that while the defendant was sued for a third part of the manor of P. she tendered a charter granting the manor of R. and binding the heirs of the grantor to warrant that manor. The defendant said that what the Bishop called the manor of R. was in fact the third part of the manor of P. and offered to aver that the land claimed from her was comprised within the charter. The vouchees then warranted.

8. *Erdington v. Burnel* 35

This was a writ of entry *ad terminum qui preterit*. The plaintiff's ancestor had by his charter granted lands absolutely to the defendant in consideration of a loan, but by a collateral agreement between the parties it was covenanted that if the grantor or his heirs repaid the loan within a certain time the land was to revert to him or them. The defendant pleaded the unconditional charter, and the plaintiff set up the collateral agreement and pleaded the tender of the money lent which the defendant had refused to accept. The Court ruled that the defendant must reply to the collateral agreement.

9. *Rye v. Tumby* 36

This was in form an action for dower, but the arguments reported turn on the effect of a written agreement upon a charter of the same date made between the same parties. The widow of Ralph of Rye claimed dower from John of Tumby. Tumby vouched John, Ralph's son, to warranty. John refused to vouch absolutely but was willing to vouch conditionally. The important facts, granted by both sides, were these. Ralph had borrowed £220 from John of Tumby and had made a charter conveying to John absolutely certain lands. In this charter nothing was said about the loan. By an agreement of equal date it was covenanted that if Ralph should repay the £220 at any time within the next ten years

the land conveyed to John by the charter should revert to Ralph, but if the money were not repaid within that time then the land should remain to John and his heirs for ever. At the time when John, the son and heir of Ralph, was vouched to warranty the ten years had not elapsed. It was therefore still open to John by the terms of the collateral agreement to repay the money and recover possession of the land. If he warranted absolutely he would bar himself from any future recovery. Although the charter was an absolute and unconditional conveyance, yet seisin had been given, John said, in the terms of the collateral agreement; and he was willing to warrant after the same manner. John of Tumby, the voucher, insisted that he was in possession by virtue of the charter and that he was entitled to be warranted absolutely and unconditionally after the form of the charter. This was the issue left for judgment, but there is no record of any judgment. The case appears to have been settled out of Court. The vouchee repaid the £220 and John of Tumby delivered the land to him.

10. *Walsham v. Walsham* 52

In March 1278 Roger of Walsham granted certain land to John of Walsham in fee tail. In 1293 John, who was only tenant in tail, regranted, by a fine, the same land to Roger and Roger's wife for the term of their lives, with reversion to himself and his heirs in fee simple. In 8 Edward II. this land was in the possession of John's widow, Alice. John's son and heir, Nicholas, an infant, brought by his guardian a writ of formedon against his mother claiming the land. He based his title upon Roger's charter granting the land in fee tail. Alice replied by saying that John did not hold the land in fee tail but in fee simple by virtue of the fine. Nicholas denied the validity of the fine. Alice replied that Nicholas could neither admit nor

deny the fine while he was under age. After long arguments and two adjournments Alice traversed the allegations in Nicholas's writ and denied that Roger granted the land in fee tail. And upon that denial issue was joined.

11. Colchester v. The Abbot of Colchester 71

This was a writ of ael brought against the Abbot of Colchester by which the plaintiff sought to recover certain tenements of which he said that his grandfather had died seised. The grandfather, it is to be gathered, had devised them by will to the Abbot. The tenements claimed were in the suburb of Colchester. In Colchester itself burgage tenure was customary, and tenements held by burgage tenure were devisable. The Abbot's first point was that the suburb followed the custom of the town. This was denied by the other side. The Chief Justice ruled that it would depend upon whether, when a general tallage was levied, the suburb was tallaged along with the town. But these subsidiary questions became irrelevant when it was proved that the tenements claimed were not, in fact, held by burgage tenure. The Abbot, no longer able to contend that they were devisable, then denied that the plaintiff's grandfather had died seised of them; and that was the issue left for a jury.

12. Newmarket v. Holbeach . . . 77

W. G. died leaving two daughters, Laura and Margery. These two succeeded to their father's estate and divided his lands between them. Margery died, leaving a son. Laura's husband died, and she then brought her writ of *enfi in vita* against Margery's husband, claiming certain tenements which, she said, he had only by the grant of her late husband, and which were her share of the family heritage. Lawrence, Margery's husband, said, on the other hand, that the lands claimed by Laura were his late wife's

share of this heritage, and that he held them as tenant by the curtesy. This issue of fact was left to a jury.

13. Dodeswill v. Mustel . . . 84

The defendant held land by the lease of the plaintiff's father, whose heir the plaintiff was. The defendant had paid no rent for two years, and the plaintiff thereupon brought his writ of *cessavit* for the recovery of the land. The defendant pleaded a quitclaim, but a jury found that this quitclaim was a forgery. The defendant then, by his attorney, tendered the arrears of rent, or security for them, claiming to be entitled to do so if he came before judgment was given. It was objected on behalf of the plaintiff that the arrears were tendered too late. The inquest had passed, and there was no intervening time between inquest and judgment. There was a further question raised as to an attorney's power to give security on behalf of his client. In the end the Chief Justice told the attorney to find security for £100.

14. Kirkman v. Lelly . . . 87

The plaintiff held land of the defendant as guardian of her infant son. His rent was in arrear, and the defendant set out to levy distress. She found the plaintiff working his land with a couple of horses. She said that when he saw her coming, guessing her intention, he fled away with his horses until he came to a certain place where she seized the horses. The plaintiff then brought his writ of replevin and asserted that the place where the horses were seized was not within the defendant's fee; and this was the issue left for a jury;

15. Waleys v. Ross . . . 89

Margery was the widow of Walter of Wales, who died leaving an infant son. William of Ross, asserting that

he was guardian of Walter's lands and heir, seized the lands, but Margery refused to surrender her son to him. When she brought her writ of dower against William he said that he was willing to assign her dower if she would deliver the infant heir to him. Margery denied that William was entitled to the custody of the heir, not being the rightful guardian. William objected that Margery could not take up that position since she had recognized him as guardian by bringing her writ against him; but the Chief Justice overruled the objection, saying that William, rightly or wrongly, was by his own act in possession of the lands, and there was no one else against whom Margery could bring her writ. Margery's reason for refusing to deliver her son to William was that her husband had not held the land from William but from another, who was taking legal steps to prove his right to the wardship. The issue left to the jury was whether or not Walter held the tenements from William—William asserting that he did, Margery that he did not.

16. Anon 94

The defendant in a writ of entry had a life-term only. He was allowed aid of the remainder-man.

17. *Scut v. Scut* 95

Joan Scut sued Cecily Scut in the court of a manor in the King's ancient demesne to recover land of which she said Cecily had disseised her. Her writ was necessarily a little writ of right close according to the custom of the manor. Cecily made default, and the land was seized into the hand of the lord of the manor. Cecily subsequently surrendered the land to the lord and Joan was unable to obtain justice. She then obtained a writ ordering the Sheriff to go, with four knights, to the manorial court and see that justice was done to Cecily, but the suitors refused to do anything,

on the ground that the land had been surrendered to the lord. A further writ then issued to the Sheriff ordering him to bring the writ original and the record into the Common Bench, where a jury was ordered to come and try the original issue between Joan and Cecily.

18. *Eleanor (wife of Matthew, son of John) v. Halfknight* 99

In this action Eleanor claimed dower from John Halfknight. In respect of part of the land from which Eleanor claimed dower, John pleaded that her husband was never so seised of it as to entitle her to dower; and on this plea issue was joined. As to the residue of the land, John pleaded that by a judgment given in an assize of novel disseisin the estate of Eleanor's husband's ancestor in the land had been annulled, and that consequently no right to dower could accrue to Eleanor. Eleanor pleaded her husband's seisin, and contended that as her husband was not party to the judgment upon which the defendant relied, she did not come within the provisions of the Statute of Westminster, cap. iv., and was not barred by the judgment from claiming dower. Judgment on the legal point was reserved, and a jury was ordered to come to find the facts.

19. Anon 113

This was a writ of dower. As it was admitted that the defendant had only a term of years, the writ was quashed.

20. *De Lisle v. Say* 114

This was a writ of replevin. The defendant avowed the seizure of which the plaintiff complained on the ground that the plaintiff held of him by homage and that the homage was in arrear. The plaintiff denied that he held the land of the defendant by homage.

He asserted that he held it of the King by homage, and that he had done homage to the King for it. The Court desired to be advised further as to the plaintiff's allegations that he held of the King by homage, and adjourned the hearing to enable him to certify them thereof. The plaintiff was apparently unable to do this, and when the hearing was resumed he pleaded that the seizure had been made outside the defendant's fee. Issue was joined on this plea, and a jury found that the seizure had been made within the defendant's fee. Judgment was thereupon given that the plaintiff should take naught by his writ, but be in mercy for his false claim; and the beasts seized were to remain irreplevisable for ever.

21. *Cressy v. Gretton* 120

The plaintiff brought a writ of replevin in the following circumstances. She held certain tenements of the defendant and claimed to hold them as a third part of the manor of W. The defendant said that she held them as so many bovates and not as a fraction of the manor. The plaintiff was willing to pay the services claimed if they were accepted as services for the third part of the manor, but she refused to pay them as due for the tenancy of so many virgates of land. The defendant thereupon levied distress and the plaintiff brought her action and the above facts were stated. In the end, after long arguments during which the defendant denied that the plaintiff had ever tendered the services in any way, the action was settled by the defendant accepting the services while making protestation that the plaintiff did not hold of him a third part of the manor, but a certain number of bovates of land only. A question also arose as to whether one parcener alone could receive fealty in the absence of his co-parceners, and it was ruled that all the parceners must be present; and further that fealty could not be done by attorney.

22. *Parker v. The Prior of Blythburgh* 131

A predecessor in office of the defendant bound himself and his successor to pay a hundred shillings to the plaintiff for a horse and a roll of cloth had for the use of the House. The bond was sealed with the obligee's private seal only. It was argued on behalf of the defendant that only a deed sealed with the common seal of the House could bind him. Judgment was reserved.

23. *Noyers v. The Prior of St. Frideswide's, Oxford* 133

The Prior and Convent had bound themselves to pay an annuity of two marks to the plaintiff until such time as they provided a suitable benefice for him. They subsequently offered to present him to a certain benefice, but he refused the presentation on the ground that the benefice was not a suitable one, considering his social position. The Prior thereupon refused to continue to pay the annuity, and the plaintiff sued him for the arrears. Issue was joined on the sufficiency of the benefice offered to the plaintiff.

24. *Whittlesey and Sedgford v. Laurence* 135

This was an action by a writ of entry to recover land held by the defendant which the plaintiffs claimed as their right. The defendant made default and Robert Hereward intervened, asserting that the defendant had only a life-term by his lease and asking to be received to defend his own right, and he was received. The plaintiff's case was that the original defendant had obtained possession of the land only by a lease which their grandmother had made to him while she was of unsound mind. Robert's story was that the father of A, one of the claimants, had granted the whole of the land claimed to him, Robert, and had bound his heirs to warranty. A, therefore, being his father's heir, was bound to warrant

Robert if he were impleaded in respect of the land; and Robert asked judgment whether A. could claim a moiety of the land against the tenor of his father's deed. In respect of the other moiety, claimed by the other plaintiff, Robert simply vouched A. to warranty. A. replied that he was not claiming his moiety in right of his father's seisin but in right of his grandmother's, and therefore ought not to be barred from action by his father's deed. And, in avoidance of the voucher to warranty, he said that he had naught by descent from his father. Robert said that A. had assets by descent, and on that plea issue was joined; but, before a jury came, A. warranted Robert, making protestation that he had taken naught by descent, and then, by licence of the Court, surrendered to his co-claimant the moiety claimed by him. His own claim to a moiety then remained, and Robert again vouched him to warranty, and again issue was joined on A.'s plea that he had naught by descent from his father; but before this issue was tried A. made default in appearance. Judgment was thereupon given that Robert should have land of A.'s to the value of the land surrendered to A.'s co-claimant.

25. *Cleasby v. Applegarth* 140

A., the widow of R. C., claimed certain land from T. A. by a writ of *cui in vita*. T. said that he held the land jointly with his wife, by virtue of a fine, and he asked that the writ should be quashed because his wife was not named in it as a co-tenant with him. The plaintiff replied that she and her husband had been in seisin of the land claimed long after the date of the fine. T. A., the defendant, then said that one A. S. had claimed in the time of Edward I. certain land from the present plaintiff and her husband, who had vouched him, T. A., to warrant them of the land. A. S. recovered the land, and the present claimant and her husband were awarded land to the value out of the land which T. A., the present defendant, had by

hereditary descent. The Sheriff, by mistake, gave them seisin of land which T. A. had acquired by purchase. T. A. thereupon complained, and seisin of this land was re-delivered to him by the Sheriff, and other land which he had by descent was delivered to the present claimant and her husband. The land now claimed was the land so re-delivered to him by the Sheriff, and he repeated that he held it jointly with his wife in virtue of the fine, and he again asked that the writ should be quashed. The claimant denied that the lands claimed ever passed out of the seisin of herself and her husband until her husband demised them to the defendant. Upon that plea issue was joined.

26. *Corbet v. The Prior of Kirkham* . 143

T. C., the plaintiff, sought by a writ of cosinage to recover rent, not land, from the Prior. The Prior objected that the proper course in the circumstances was for the plaintiff to levy distress, or he might have proceeded by a writ of customs and services; and he asked that the writ of cosinage should be quashed. The Court upheld the writ, and the plaintiff recovered his rent, but the Court told him that by claiming by a writ of cosinage he had lost his lordship for ever.

27. *Calwick v. Ferrers* 155

This was an action for the recovery of land by a writ of cosinage. One T. by his first wife had a son T., and by his second wife a son J. T., the son, succeeded to the family heritage on the death of his father; and on the death of this T., his half-brother J. entered. The plaintiff was the sister of T. the father, and she sought to recover the land on the ground that after the death of T. the son, the right resorted to her, and that J. was her tollor, being of the half-blood only. J. said that he was in possession as brother and heir of the younger T., and he asked that

the action should stand over until he was of full age. The plaintiff pleaded that a necessary condition of the action standing over until the defendant's full age was that he should be brother of T. by the whole blood. As he was only of the half-blood, he was an intruder and her tollor and was not entitled to his age. On these arguments the Court reserved judgment.

28. *The King v. The Bishop of Norwich* 166

The King had, by legal process, recovered from W. B., the patron, the right to the next presentation to the rectory of B. He had neglected to present a clerk to the Bishop within six months of the rectory becoming vacant, and the Bishop had thereupon filled it. When the King at length presented a clerk the Bishop refused to accept him on the ground that the church was filled by the clerk collated by himself by reason of the King not having presented within the six months. The King then brought his writ of *quare non admisit*, and it was argued on his behalf that time did not run against him. The Bishop replied that this was true only when the King was acting in his own right, but that the rule did not cover the case when he was acting merely as the assignee of a subject. The question raised was referred to Parliament for discussion; and in the end the King withdrew his writ.

29. *The King v. Washingley* . . . 179

This was a writ of *quare impedit* brought by the King against E. W., the mother of the infant heir of W. W., lord of the manor of W. The King's case was that the church of W. was appendant to the manor of W., that the manor was holden of him by knight's service, that upon the death of W. W., leaving an infant son, he had taken possession of the manor and its appendancies, as he was entitled to do, and that it was consequently

his right to present to the vacant church. As E. W. contested that right, the King brought his writ of *quare impedit*. The defendant's case was that the church was not appendant to the manor, but was held in socage from the Abbot of Crowland, and, being so held, the King had no right to the presentation during the infancy of the heir. That right, she contended, belonged to herself, as the next of kin to the infant heir. Domesday Book was cited on behalf of the King, and it witnessed that the church was appendant to the manor, and thereupon the Court gave judgment for the King.

30. *Hereford v. The Prior of Newnham* 191

The plaintiff claimed the right, by hereditary succession, to present to the church of W. The defendant contested the plaintiff's right, and the plaintiff brought his writ of *quare impedit*. The defendant's case was that an ancestor of the plaintiff, by whose deed the plaintiff was bound, had granted, by a fine, the advowson of the church to the Prior of Newnham and his successors for ever. The plaintiff pleaded that a long time after the date of the fine he had presented a clerk to the church. The defendant denied this; and issue was joined on the plea. The jury found against the plaintiff on this issue, and judgment was given that the Prior should recover the presentation and have a writ to the Bishop.

31. *Anon.* . . . 196

A manor to which an advowson was appendant escheated to the plaintiff. The plaintiff was disseised of the manor, and the disseisor claimed the right to present to the church. The plaintiff brought his writ of *quare impedit* while his writ of novel disseisin was pending. The question for the Court was whether he could then recover the presentation by his writ of *quare*

impedit. It was argued on his behalf that if he recovered the right by the *quare impedit*, then, even though it should be impossible for him to present a clerk within six months of the church becoming void, he would be entitled to recover damages to the amount of two years' value of the church, which he could not do if he recovered by the assize. The judgment of the Court is not reported.

32. *Snetterton v. The Prior of Castleacre* 197

This was a writ of replevin, but the question of interest was of what beasts the defendant should wage deliverance. The plaintiff said that the defendant had seized eight cows, five heifers, three steers and a bull; and he said further that each of the cows had calved twice while they were in the defendant's possession. The defendant said that he had seized only six cows, two of which had died through the plaintiff's neglect to feed them, three heifers, one steer and one bull; and he waged deliverance of such of these as were alive, and of the two calves of two cows. The plaintiff persisted in his previous allegations as to the number of beasts seized and as to the calving twice of each of the cows. The defendant also denied that the plaintiff had ever before sued deliverance of the beasts as he asserted he had done. A jury was ordered to come and find all the facts.

33. *Attewell v. Attewell* 200

By a writ of entry on disseisin the plaintiff sought to recover certain land from the defendant, an infant, whose deceased father had wrongfully disseised him of it. The defendant pleaded that his father had died seised and that he himself was in possession as his father's heir, and he prayed his age. The plaintiff replied that the defendant was not entitled to have his age because he, the plaintiff, had brought an assize of novel disseisin

against the defendant's father, who had died while it was hanging; and chapter xlvii. of the Statute of Westminster II. provided that a plea against the heir was not to be delayed by reason of his infancy. It appeared that the process in the assize had got no further than the purchase of the writ when the infant's father died, and it was contended that it would be straining the law to deprive the defendant of his age unless it were shown either that the assize had been opened, or that the tenant had been attached, or that a view had been had; and then the defendant offered to withdraw his plea if he were allowed a view, and, after some argument, the plaintiff conceded this.

34. *Anon. v. Maidstone (Bishop of Worcester)* 202

The defendant had bound himself to pay certain moneys to the plaintiff. The bonds were executed by him before he became a Bishop, and the writ did not describe him as a Bishop, and it was contended on his behalf that it was consequently bad. After arguments, the Court quashed the writ.

35. *Anon.* 203

A writ of right was brought in a manorial court against several defendants. It was removed by a *pone* into the Bench. Two of the defendants named in the writ original were not named in the *pone*. Judgment of variance between the writ original and the *pone* was asked by one of the defendants. It was replied on behalf of the plaintiff that the two defendants whose names were omitted from the *pone* were infants who had successfully prayed their age and had got judgment that so far as they were concerned the action should stand over until their age. The writ was being prosecuted in the Bench against the other defendants. On the ground that there were no tenants named in

the *pone* of a parcel of the tenements claimed, when it might easily have been stated who were the tenants, the Court gave judgment that the plaintiff should take naught by his writ.

36. Bures v. The Abbot of Fécamp . 204

A. granted land by charter in these terms: 'I, A., have given to B. the tenements etc. to have and to hold etc. to him and to the heirs of his body, and if he should die without heir of his body then to Joan and to the heirs of her body.' B. died without heir of his body and Joan claimed the tenements in accordance with the form of the gift. Joan was unwilling to produce the charter and wanted to aver that it contained the words that 'the tenements were to remain' to Joan and the heirs of her body after the death of B. without heir of his body, but was in the end forced by the Court to produce the charter which ran as stated above. She was obliged to admit that the charter did not bear out the words of her writ; yet, she contended, there were words in it which might be understood to prove the form as she had laid it.

BEREFORD C.J. was of opinion that the right could not pass by the words 'to have and to hold' alone. After some further discussion INGE J. said that the Court was anxious to give effect to what it honestly thought was the grantor's intention, and it ruled that the defendant must answer.

37. Fitzwarren v. The Abbot of St. Edmunds 208

The plaintiff held a manor of the Earl of L. by certain services. The Earl granted the lordship to the defendant, who distrained the plaintiff for arrears of services. The report is only fragmentary, and the exact matter of which the plaintiff complained is not plain. The question whether in the circumstances the defendant ought not to have proceeded by way of a writ of *per quere*

servitii rather than by distress seems to have been discussed.

38. Porters v. The Abbot of Chalcombe 209

Two special points were taken in this case. Apparently both of them came to naught, for issue was joined on a third. The plaintiff, John of Porters, by his writ of replevin, complained that the defendant had wrongfully seized and detained his cattle. The defendant avowed upon John's wife and not upon John, the actual complainant. 'This is a wonderful avowry!' *Scrope* said. Then it was further objected to the avowry that John's wife was not the defendant's tenant but the King's, though the defendant might be entitled to the rent. In the end the plaintiff pleaded that the cattle were seized outside the defendant's fee, and on that plea issue was joined.

39. Wickham v. The Abbot of Cirencester 210

The plaintiff brought a writ of right according to the custom of the manor in a manorial court by which he claimed certain land from the defendant. The defendant pleaded that he held the land by a charter of Henry III., and on this ground got a writ removing the action into the Bench. In this Court the plaintiff pleaded that the land claimed by him was of the ancient demesne of the Crown and had always been pleadable in the manorial court according to the custom of the manor. The defendant again affirmed his charter, and pleaded that he held the land under it in free and perpetual alms. The plaintiff denied that the land he claimed was comprised within the charter, and pleaded further that the Abbot held it only because his predecessor had unlawfully disseised his, the plaintiff's, ancestor of it; and he asked that the action should be sent back to the manorial court. Later on he failed to appear to prosecute his claim, and was amerced therefor, while the defendant went away without day.

40. Greetham v. Lung 214

The plaintiff claimed land by a writ of right. The defendant pleaded that he had recovered the same land from the plaintiff by judgment in a writ of *cessavit* and offered to aver such judgment by the record. The plaintiff denied that any such judgment had been given, and thereon issue was joined.

41. Anon. 216

This was an action for the return of a charter bailed by the plaintiff to the defendant. The plaintiff said that the terms of the bailment were that the charter was to be returned to her upon her request. The defendant said that the charter was bailed to him upon the terms that if the plaintiff allowed one J. to hold an acre of her land for three years the charter was then to be returned to her, but if she ejected J. within the three years then the charter was to be delivered to J.; and he said that the three years had not yet elapsed, but if the Court directed him to deliver it at once to the plaintiff, he was ready to do so. The plaintiff denied that the charter was delivered on the terms alleged by the defendant and asked judgment for its return and for damages.

42. Anon. 217

A charter was bailed to the defendant by the plaintiff and another jointly. The plaintiff had sued out a writ calling upon his co-bailor to say why the charter should not be delivered to him, the plaintiff. If the defendant do not sue out a writ to the co-bailor to come and support the defendant's answer in refusal of the plaintiff's claim for the delivery of the charter, the plaintiff shall have judgment on the principal issue and damages.

43. Waceville v. Thorpe and Leech . 217

The plaintiff, by a writ of *cui in vita*, claimed certain tenements from the defendants who had not entry

therein, she alleged, except through her husband. The defendants pleaded that they had been enfeoffed by the plaintiff herself before her marriage. Issue was joined on this plea. On the day given for the inquest Edmund the Leech, one of the defendants, came into Court and removed his attorneys, and then left the Court. Martin Thorpe, the other defendant, came, and also the jurors. A further day was given to the plaintiffs, with notice to Martin and the jurors. On that day neither of the defendants appeared. The Court ordered the land to be taken into the King's hand, and the defendants to be summoned to hear their judgment.

44. Anon. 218

A writ of *cui in vita* was quashed because the plaintiff described herself therein as her father's daughter, and not as the wife of her husband who had alienated the land.

45. Codrede v. Pursleye 219

In a writ of *cosinage* it was ruled by the Court that the defendant could not take the objection that H., where it was laid in the writ that the tenements claimed lay, was neither a vill nor a hamlet after he had asked for a view.

46. Anon. 219

If the suitors of a manorial court will not record the process of an action, the judgment wherein is impugned in a writ *de falso iudicio*, they shall all be distrained.

47. Anon. 219

A writ of waste does not lie against a guardian in socage, for he is accountable by a writ of account.

48. Anon. 219

The action, by a jury of *utrum*, was to recover an acre of meadow as free alms. The defendant pleaded that the plaintiff, being seised of the defendant's rent service and fealty, could not sustain his action. The plaintiff denied that he was seised of the fealty, and contended that seisin of the rent did not bar him from his action. The defendant pleaded seisin

of the fealty, and alternatively, in case the jury should find that the plaintiff was not so seised, that the meadow was not free alms.

49. Anon. 220

If a widow falsely declare before the Justices that she is enccinte, to the disturbance of the heir's entry, she shall lose her dower.

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FOUNDED 1887.

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- Vol. XIX., for 1904. YEAR BOOKS SERIES. Vol. II. YEAR BOOKS of 2 and 3 EDWARD II. (A.D. 1308-9 and 1309-10). Edited, from sundry MSS., by Professor F. W. MAITLAND. Crown 4to. Price to non-members, 28s.

This continues the work of Vol. I. The mass of unpublished material discovered continues to increase, and gives to these volumes an interest even beyond what was contemplated at their first inception. In many instances the publication of two or even three reports of the same case, together with a full note of the pleadings recorded on the roll of the Court, will enable the reader to comprehend in a manner that has hitherto been impossible the exact nature of the points of law discussed and decided.

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This volume completes the masterly digest of the Borough Customs begun in Vol. XVIII. by the same Editor. The Introduction contains an analysis of the primitive laws embodied in the Local Customals, traces their sources both in procedure and substantive law, and compares them with the development of the Common Law. The second volume deals with contract, succession, land, alienation and devise of land, husband and wife, infants, dower, the Borough Courts and their officers, process and execution, and many other subjects.

- Vol. XXII., for 1907. YEAR BOOKS SERIES. Vol. IV. YEAR BOOKS of EDWARD II. (A.D. 1310). Edited, from sundry MSS., by the late Professor F. W. MAITLAND and G. J. TURNER, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. III., and concludes the reports for the year 1310. The text and translation were left nearly complete and once revised by Professor Maitland at his death. Mr. Turner has added a considerable number of additional notes from the records, most of which are collected in an Appendix, while some are embodied in the later portions of the text. He has also written an Introduction on the Courts and Judges of the period, with comments on some of the important cases reported in the volume.

- Vol. XXIII., for 1908. SELECT CASES CONCERNING THE LAW MERCHANT. Vol. I. LOCAL COURTS. Edited, from sundry MSS., by Professor CHARLES GROSS, Ph.D., Professor of History, Harvard University. Crown 4to. Price to non-members, 28s.

This volume illustrates the administration of the Law Merchant from the 13th century onwards in the Local Courts established for the execution of speedy justice between merchants, such as Fair Courts, Borough Courts, Staple Courts. The records of these Courts have proved to be very

plentiful and enlightening. As no such mediæval records are known to exist on the Continent, the English documents are very important, and no attempt has hitherto been made to digest and compare them. The Fair Court of St. Ives has been chosen as the principal type; but the records of other Courts at Carnaïvon, Bristol, Leicester, Norwich, Exeter, the Cinque Ports and elsewhere have also been utilised. The Introduction deals with the history of all such Courts and of their records, and contains interesting appendices. Another volume will deal with the Law Merchant in the King's Courts at Westminster, and with the history of the subject generally.

Vol. XXIV., for 1909. YEAR BOOKS SERIES. Vol. V. THE EYRE OF KENT of 6 and 7 EDWARD II. (A.D. 1313-4), Vol. I. Edited, from sundry MSS., by the late Professor MAITLAND, the late L. W. VERNON HARCOURT, of Gray's Inn, Barrister-at-Law, and W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is the first complete report in detail of the work of the Itinerant Justices commissioned to 'hold all pleas' touching the county visited on the Eyre. The text has been laboriously compiled from the collation of 18 MSS., mostly independent and all more or less corrupt. The present volume contains an account of the Commissions, the Articles of the Eyre, the preliminary proceedings, the Pleas of the Crown, and some actions of attainr and trespass. It throws new light on the whole procedure, and in particular on the financial purposes of the Eyre and the growth of the Jury System. The Introduction treats of all these matters and also incidentally of other interesting subjects, such as the history of coroners, abjuration of the realm, privilege of clergy, deodands, a subsidiary Eyre for the liberty of Wye, the trades and callings exercised at the period, the topography of Canterbury, and an interesting philological note on the obscure term 'busones,' &c. An appendix contains the names of all the bailiffs and jurors attending the Eyre.

Vol. XXV., for 1910. SELECT PLEAS OF THE COURT OF STAR CHAMBER. Vol. II. Edited, from the Records in the Public Record Office, by I. S. LEADAM, of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. XVI., and contains a selection of interesting records during the reign of Henry VIII. These are largely concerned with matters of great historical and economical importance—*e.g.* the State policy of the period in fixing prices for commodities and in controlling or forbidding exports; the relations between the monastic houses and their agricultural tenants or commercial communities; rights of pasture and enclosure of common lands; the conflicting interests of the artisan and trading classes; the organisation of municipalities, and in particular Newcastle and Bristol; manorial tenures and the position of villeins. All of these matters are further illustrated in a full Introduction, which also deals with the development of (1) the constitution, and (2) the process of the Court of Star Chamber.

Vol. XXVI., for 1911. YEAR BOOKS SERIES. Vol. VI. YEAR BOOKS of 4 EDWARD II. (A.D. 1310-11). Edited, from sundry MSS., by G. J. TURNER, M.A., of Lincoln's Inn, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. IV. of this series, and contains the

reports for Michaelmas, Hilary, and Easter terms of 4 Edward II. Two new and valuable manuscripts have come to light since the publication of Vol. IV. of this series, and have been used in editing this volume. The introduction contains a dissertation on the origin of the Year Books; a brief history of the manuscripts and detailed particulars of a portion of their contents which are intended to enable the reader to see how they are related to one another. It also contains the hitherto unnoticed letters patent by which James I. appointed official law reporters and the entries on the Issue Rolls of the payments made to them.

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This volume contains forty-one grants to companies, ranging in date from 1530 to 1707. They include incorporations of merchants trading abroad, of companies for plantation, mining, fishing, insurance, and water supply, and for the manufacture of starch, soap, salt, saltpetre, paper, linen, tapestry, and silk. The Introduction treats of the career of these companies, and incidentally of other historically interesting companies formed during this period, and discusses the general development of trading companies, as joint-stock undertakings, from the guilds and merchant venturers of earlier times.

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- Vol. XXIX., for 1913. YEAR BOOKS SERIES. Vol. VIII. THE EYRE OF KENT of 6 and 7 EDWARD II. (A.D. 1313-14), Vol. III. Edited from sundry MSS., by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-law. Crown 4to. Price to non-members, 28s.

This is a continuation of Vol. XXVII., comprising the remainder of the civil pleas in alphabetical order, and a collection of notes dealing with miscellaneous matters. The Introduction discusses many of the reported cases, and gives some account of the mediæval procedure under writs of *quo warranto*. It also treats of the long-forgotten assize of Fresh Force, of the salaries of the Justices and the fees of their Clerks, and of several minor matters of legal, historical, philological and social interest.

Vol. XXX., for 1914. SELECT BILLS IN EYRE, A.D. 1292-1333. Edited from the Records in the Public Record Office by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume contains 157 bills presented in the Eyres of Lincolnshire (14 Edward I.), Shropshire (20 Edward I.), Staffordshire (21 Edward I.), and Derbyshire (4 Edward III.), and also 18 other bills of similar form presented to two Special Commissions sitting respectively in the Channel Islands in 2 Edward II. to deal with various complaints of oppression and other wrongs made by the Islanders to the King, and in Berwick-upon-Tweed in 7 Edward III. to determine the right to lands which had been seized by Robert Bruce and granted by him to his supporters, and of which the King of England had taken possession after the battle of Halidon Hill. The endorsements on the bills and the existing subsidiary documents connected with them, as well as the relevant records in the Eyre and other rolls, are also given in full. These bills contain many interesting details of provincial life and manners in the thirteenth and fourteenth centuries. From one of them we learn that a branch of the Chancery, whence writs were obtainable, was temporarily established in a county wherein an Eyre was sitting or was about to sit. Another one seems to reveal the existence of an organised law school in London, with the power of calling to the bar, of a much earlier date than any of which we have previously had knowledge. The Introduction deals with the presentation, language, and contents of the bills, and with the meaning of the endorsements, some of which present points of much difficulty, and discusses the authority and jurisdiction of the Eyre and the various legal, historical, social, philological and critical questions which arise out of a consideration of the bills contained in the volume.

Vol. XXXI., for 1915. YEAR BOOKS SERIES. Vol. XI. YEAR BOOKS OF 5 EDWARD II. (A.D. 1311-1312). Edited, from sundry MSS., by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume includes reports of cases heard in the Hilary and Easter terms of 5 Edward II. The Introduction discusses some of the more important points raised in the course of the arguments. Of these the most important, as well as the most interesting, is the effect of the Statute *de donis*. This statute, according to Bereford, C.J., restrained alienation until the third in descent from the original feoffee had acquired seisin—that is to say, up to the fourth degree; while it was argued by some of the Serjeants that the original feoffee alone was restrained. It does not appear to have been even suggested that the statute was in permanent restraint of alienation, as has now for some centuries been generally held and taught. The Introduction discusses also the variances between the Roll of the Court and the reports, and even amongst the reports themselves, as to the terms in which individual cases were heard; as well as some other matters, including various legal, historical, and philological questions arising out of the reports.

Vol. XXXII., for 1915. PUBLIC WORKS IN MEDIEVAL LAW. Vol. I. Edited, from the Records in the Public Record Office, by C. T. FLOWER, of the Public Record Office and the Inner Temple, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume consists of cases taken from Ancient Indictments and the Coram Rege Rolls, relating to the maintenance of roads, bridges, sewers, and other public local works during the reigns of Edward III. and Richard II. The cases contain much matter of a legal and local interest, and are arranged under their counties, which are in alphabetical order. This volume concludes with those for Lincolnshire, and the cases for remaining counties will be provided in another volume.

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- Vol. XXXIII., for 1916. YEAR BOOKS SERIES. Vol. XII. YEAR BOOKS OF 5 EDWARD II. (A.D. 1312). Edited, from sundry MSS., by W. C. BOLLAND, of Lincoln's Inn and the North-Eastern Circuit, Barrister-at-law. Crown 4to. Price to non-members, 28s.

This volume includes reports of cases heard in the Easter and Trinity terms of 5 Edward II. The Introduction deals at some length with the preservation of the Plea Rolls, and explains the system under which the records were available for the use of the courts and litigants. The 'Rex' Rolls also are described and discussed, and an attempt is made to discover their purpose. Other subjects specially treated of are Case Law in the time of Edward II. and the pleas of general and special bastardy. There are also notes and comments on the more interesting of the reports and on some pertinent historical and philological matters.

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- Vol. XXXIV., for 1917. YEAR BOOKS SERIES. Vol. XIII. YEAR BOOKS OF 6 EDWARD II. (A.D. 1312-1313). Edited, from sundry MSS., by Sir PAUL VINOGRADOFF, F.B.A., and LUDWIK EHRLICH, B.Litt., of Exeter College, Oxon., Dr. Jur. Lwów, Lecturer in Political Science in the University of California. Crown 4to. Price to non-members, 28s.

This volume contains reports of cases in the Michaelmas term of Edward II. The Introduction deals exhaustively with the relations between the different manuscripts of the reports, and discusses several of the reported cases.

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- Vol. XXXV., for 1919. SELECT CASES BEFORE THE KING'S COUNCIL. Edited from the Records in the Public Record Office, by the late I. S. LEADAM and Professor J. F. BALDWIN. Crown 4to. Price to non-members, 28s.

This volume contains reports of cases heard before the King and Council between 1243 and 1482. Hitherto there has not been published any comprehensive collection of cases before this tribunal which was the ancestor of the Court of Star Chamber. Professor Baldwin in the introduction deals with the power of the Council as a Court, its relation to other Courts of Law, its jurisdiction and procedure, and discusses the more important cases and their subsequent history and effect.

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- Vol. XXXVI., for 1918. YEAR BOOKS SERIES. Vol. XV. YEAR BOOKS OF 6 AND 7 EDWARD II. (A.D. 1313). Edited, from sundry MSS., by W. C. BOLLAND, of Lincoln's Inn and North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members, 28s.

This volume contains reports of cases heard in the Hilary term of 6 Edward II. and in Michaelmas term of the following regnal year. The Introduction investigates the origin and history of appearance by attorney and incidentally discusses appearance by bailiff and by essoin; traces the gradual extension of the provisions of the Statute of

Gloucester to warrant writs other than those named in it ; calls attention to and explains some apparent infractions of the provisions of the Great Charter that Common Pleas shall not follow the King's Court, but shall be held in some certain place ; discusses some phrases and words of doubtful meaning found in the text ; and concludes with notes on the more interesting reports included in the volume.

Vol. XXXVII., for 1920. YEAR BOOKS SERIES. Vol. XVIII. Edited from sundry MSS. : YEAR BOOKS OF 8 EDWARD II. (A.D. 1314). By W. C. BOLLAND, of Lincoln's Inn and North-Eastern Circuit, Barrister-at-Law. Crown 4to. Price to non-members £2 12s. 6d.

This volume contains the reports of the Michaelmas Term of the eighth year. The Introduction deals at some length with the practical side of Jury service *temp.* Edward II., and makes an attempt to show what is entailed upon those who had to serve. It contains with some comment an interesting and hitherto unknown speech of Scrope, C. J., touching the enormous fine inflicted on Hengham, C. J. by Edward I. ; and includes notes in elucidation of the more important and difficult cases reported in the volume.

The Volumes in course of preparation are:

Vols. . YEAR BOOKS SERIES. Vols. IX., X. YEAR BOOKS OF EDWARD II. By G. J. TURNER and Professor GELDART.

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RULES

1. The Society shall be called the Selden Society.

2. The object of the Society shall be to encourage the study and advance the knowledge of the history of English Law, especially by the publication of original documents and the reprinting or editing of works of sufficient rarity or importance.

3. Membership of the Society shall be constituted by payment of the annual subscription, or, in the case of life members, of the composition. Form of application is given at the foot of page 30.

4. The annual subscription shall be £1. 1s., payable in advance on or before the 1st of January in every year. A composition of £21 shall constitute life membership from the date of the composition, and, in the case of Libraries, Societies, and corporate bodies, membership for 30 years.

5. The management of the affairs and funds of the Society shall be vested in a President, two Vice-Presidents, and a Council consisting of fifteen members, in addition to the *ex-officio* members and members nominated by the Council. The President, the two Vice-Presidents, the Literary Director or Directors, the Secretary, and the Treasurer shall be *ex-officio* members. Three shall form a quorum.

6. The President, Vice-Presidents, and Members of the Council shall be elected for three years. At every Annual General Meeting such one of the President and Vice-Presidents as has, and such five members of the Council as have, served longest without re-election, shall retire.

7. The five vacancies in the Council shall be filled up at the Annual General Meeting in the following manner: (a) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent to the Secretary on or before the 14th of February. (b) Not less than fourteen days before the Annual General Meeting the Council shall nominate for election five members of the Society. (c) No person shall be eligible for election on the Council unless nominated under this Rule. (d) Any candidate may withdraw. (e) The names of the persons nominated shall be printed in the notice convening the Annual General Meeting. (f) If the persons nominated, and whose nomination shall not have been withdrawn, are not more than five, they shall at the Annual General Meeting be declared to have been elected. (g) If the persons nominated, and whose nomination shall not have been withdrawn, shall be more than five, an election shall take place by ballot as follows: every member of the Society present at the Meeting shall be entitled to vote by writing the names of not more than five of the candidates on a piece of paper and delivering it to the

Secretary or his Deputy, at such meeting, and the five candidates who shall have a majority of votes shall be declared elected. In case of equality the Chairman of the Meeting shall have a second or casting vote. The vacancy in the office of President or Vice-President shall be filled in the same manner (*mutatis mutandis*).

8. The Council may fill casual vacancies in the Council or in the offices of President and Vice-President. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council may nominate to serve for three years on the Council a representative from each of the Inns of Court and the Law Society, and five persons not domiciled in the United Kingdom. The Council shall also have power to appoint Honorary Members of the Society.

9. The Council shall meet at least twice a year, and not less than seven days' notice of any meeting shall be sent by post to every member of the Council.

10. The Council may appoint a Literary Director or Directors, a Secretary, a Treasurer, and such other officers as they shall from time to time think fit, to hold office during the pleasure of the Council; and may from time to time prescribe their respective duties; and may make any arrangements for the remuneration of any officer which they may from time to time think reasonable.

11. It shall be the duty of the Literary Director or Directors (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

12. Each member shall be entitled to one copy of every work published by the Society as for any year of his membership. No person other than an Honorary Member shall receive any such work until his subscription for the year as for which the same shall be published shall have been paid. Provided that any member may be supplied with any publications on such terms as the Council may from time to time determine.

13. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer, and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

14. The accounts of the receipts and expenditure of the Society up to the 31st of December in each year shall be audited once a year by two Auditors, to be appointed by the Society, and the report of the Auditors, with an abstract of the accounts, shall be circulated together with the notice convening the Annual Meeting.

15. An Annual General Meeting of the Society shall be held in March 1896, and thereafter in the month of March in each year. The Council may

upon their own resolution, and shall on the request in writing of not less than ten members, call a Special General Meeting. Seven days' notice at least, specifying the object of the meeting and the time and place at which it is to be held, shall be posted to every member resident in the United Kingdom at his last known address. No member shall vote at any General Meeting whose subscription is in arrear.

16. The Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

17. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

March 1909.

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To the Secretary of the Selden Society.

I desire to become a member of the Society, and herewith send my cheque for One Guinea, the annual subscription [or £21 the life contribution] dating from the commencement of the present year. [I also desire to subscribe for the past publications (vols.), and I add £ to my cheque.]

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